SENATE—*Monday, February 5, 1973*

The Senate met at 12 o'clock meridian and was called to order by Hon. WALTER HUDDLESTON, a Senator from the State of Kentucky.

PRAYER

The Chaplain, the Reverend Edward L. R. Elson, D.D., offered the following prayer:

Almighty God, ruler of men and nations, as this body lays down its program for the coming months, enable all of us to undertake our tasks with the highest wisdom and the most sincere dedication we possess, duly measuring what is urgent and timely against what is enduring and timeless. Show us clearly what our duty is and help us to be faithful in doing it. Let all we do be well done, fit for Thine eyes to see. Light up the small duties and routine chores in the belief that glory may dwell in the commonest task and that all work is a divine vocation since Thou didst enter our life in a carpenter. May we ever "do justly, love mercy, and walk humbly with our God."

We pray through Him who is Lord of all our days. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore (Mr. EASTLAND).

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 5, 1973.

To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. WALTER HUDDLESTON, a Senator from the State of Kentucky, to perform the duties of the Chair during my absence.

JAMES O. EASTLAND,
President pro tempore.

Mr. HUDDLESTON thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, February 2, 1973, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RECOMMENDATIONS SOUGHT ON REVISING REGULATIONS UNDER THE FEDERAL ELECTION CAMPAIGN ACT

Mr. MANSFIELD. Mr. President, at the request of the Secretary of the Senate, in his capacity as supervisor for Senate elections under the Federal Election Campaign Act, I wish to announce that suggestions and recommendations are being solicited by the Office of the Secretary with respect to a revision of regulations issued under the Federal Election Campaign Act insofar as it applies to elections for the U.S. Senate.

This announcement is being made in conjunction with the conclusion of the first annual reporting cycle under title III of the Federal Election Campaign Act. Year end reports covering political receipts and expenditures relating to Senate elections up to December 31, 1972, were due in the Office of the Secretary by the last day of January.

The act contemplates a new annual reporting cycle in calendar year 1973, in which reports will be due with respect to receipts and expenditures made during 1973 either in anticipation of a future Senate election or to defray debts resulting from a past Senate election.

In planning to meet these continuing responsibilities, the Office of the Secretary is anxious to benefit from the experience of political committees and candidates who have been subject to the requirements of the act since it became effective on April 7, 1972. Many suggestions and recommendations have been received already during the first 10 months of operation under the new bill. Comment has been directly solicited by the Secretary from the secretaries of state in the 33 States in which Senate elections were held last year.

The purpose of this announcement is to invite formal comment from all those who wish to recommend changes or revisions in the administration of the act with respect to Senate elections, and who may not have already made their views known. Comments should be submitted in letter form and addressed to:

Hon. Francis R. Valeo, Secretary of the Senate, room S–221, U.S. Capitol, Washington, D.C. 20510.

All comments will be given thorough review and considered for possible incorporation in a revised version of the "Manual of Law, Regulations and Accounting Instructions" issued by the Secretary in compliance with the act. All revisions will be made in close collaboration with the other two supervisory officers, the Clerk of the House and the Comptroller General, so that uniform regulations will apply to all parties complying with the act.

In the event that pertinent comments or suggestions appear to make desirable basic changes in the statute, the secretary will make appropriate reference for legislative consideration.

I urge all interested parties to take advantage of this opportunity to assist in the constructive implementation of the Federal Election Campaign Act.

I might add that the Office of the Secretary is publishing shortly a technical report on the implementation of the Federal Election Campaign Act during the first annual reporting cycle. The report, which has been prepared by Marilyn E. Courtot of the Subcommittee on Computer Services of the Committee on Rules and Administration, describes in detail the many complex preparations which had to be made in a short period of time, including daily microfilming of records with computerized indexing, in order to meet the requirements of the act.

JOINT COMMITTEE ON NAVAJO-HOPI INDIAN ADMINISTRATION ABOLISHMENT

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 18, S. 267.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The assistant legislative clerk read as follows:

S. 267, to abolish the Joint Committee on Navajo-Hopi Indian Administration.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the bill was considered, ordered to be engrossed for a third reading, was read the third time, and passed as follows:

S. 267

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 10 of the Act entitled "An Act to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and a better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes", approved April 19, 1950 (64 Stat. 47; 25 U.S.C. 640), is repealed.

Mr. MANSFIELD. Mr. President, may I say that the abolishment of this particular committee is the result of Democratic initiative.

Mr. SCOTT of Pennsylvania. Mr. President, if I may, I should like to commend the Democrats on their initiative in finally abolishing one of many committees.

TRIBUTE TO FORMER PRESIDENT JOHNSON—OKLAHOMA HOUSE CONCURRENT RESOLUTION 1008

Mr. MANSFIELD. Mr. President, I ask unanimous consent that Enrolled House Concurrent Resolution No. 1008 passed by the house of representatives of the first session of the 34th Oklahoma Legislature, the senate concurring, having to do with the passing of our distinguished former President, Lyndon B. Johnson, and our distinguished late col-

league, Senator Lyndon B. Johnson, be printed in the RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION OF THE OKLAHOMA STATE RESOLUTION

(A concurrent resolution noting the life and many accomplishments of the Honorable Lyndon Baines Johnson, 36th President of the United States of America; citing his achievements as a Congressman, Senator, Vice President, and President; noting his compassion and deep concern for his fellow man; expressing the sympathy and condolences of the people of Oklahoma to the family of former President Johnson; and directing distribution)

Whereas, on January 22, 1973, the Omnipotent Lord of the Universe did summon his faithful and loyal servant Lyndon Baines Johnson, former Congressman, Senator, Vice President and 36th President of these United States; and

Whereas, it is appropriate that the State of Oklahoma join the remainder of the Nation and the World in recognition of the contributions to mankind made by Lyndon Baines Johnson throughout his years of public service; and

Whereas, Mr. Johnson was born on a farm near Stonewall, Texas, on August 27, 1908, graduated from high school in Johnson City, Texas, received his Bachelor of Science Degree from Southwest Texas State Teachers College at San Marcos, Texas, and attended Georgetown University Law School in Washington, D.C.; and

Whereas, Mr. Johnson taught public speaking in Houston High School from 1930 to 1932, served as secretary to Representative R. M. Kleberg from 1932 to 1935, and was appointed Texas State Administrator of the National Youth Administration by President Franklin D. Roosevelt in 1935; and

Whereas, Lyndon B. Johnson, following the example of his father and grandfather who served in the Texas Legislature, sought and won election to Congress in 1937, and was then reelected to five full terms; and

Whereas, Mr. Johnson was elected to the United States Senate in 1948, and was reelected in 1954, becoming his party's whip in 1951 and Majority Leader in 1953; and

Whereas, he was a member of the U.S. Naval Reserve and served in the United States Navy as a Lieutenant Commander in 1941–42, winning the Silver Star for bravery in action; and

Whereas, Mr. Johnson was Texas' favorite son for the Democratic presidential nomination in 1956, and was selected as the vice-presidential nominee in 1960; and

Whereas, Lyndon B. Johnson proved to be a tireless campaigner during the election and a hard-working Vice President when elected, representing President John F. Kennedy abroad and serving as Chairman of the President's Committee on Equal Employment Opportunity and as a member of numerous advisory boards governing the areas of national security, space and technology, and the Peace Corps; and

Whereas, Lyndon B. Johnson succeeded John F. Kennedy in the Presidency on November 22, 1963, and quickly moved to complete the programs he had helped mold as Vice President, including those in the areas of civil rights, antipoverty, tax reduction, national defense, and education; and

Whereas, winning election to a full term in 1964, Mr. Johnson, his firm and resolute character further shaped by the crucible of the Presidency, determined to complete the platform of the "New Frontier," and to expand upon its goals many times over through the worthy "Great Society" program, insuring a greater measure of social and economic justice for all Americans; and

Whereas, President Johnson guaranteed to all citizens more self-respect and a higher degree of participation in the tasks and benefits of society through the enactment of measures on voting rights, medicare, veterans benefits, social security, minimum wages and rent supplements; and

Whereas, he showed keen foresight and great innovative capacity in new programs for elementary and secondary education, higher education, transportation planning, housing and urban development, model cities, air and water pollution, and development of parks and recreation land—all areas which have the most vital impact upon the quality and style of American life; and

Whereas, the fruits of the foregoing programs could readily be seen in an increased gross national product, a drop in unemployment rates coupled with the creation of over seven million new jobs, and an increase of $180 billion in disposable personal income for the people of this country; and

Whereas, President Johnson increased communication and understanding between all the peoples of the world, and gave them an enlarged share of freedom and security through such devices as the Peace Corps, Food for Freedom, the Alliance for Progress, the Nuclear Test Ban Treaty, and a far-reaching space program; and

Whereas, as President, Mr. Johnson led the Nation through a period of extreme danger from external enemies, and bore well the difficult burden of leadership of the free world in its fight to resist Communist domination; and

Whereas, President Johnson's concern for the well-being of the American people was indicated not only in his writings, including *This America, A Time for Action*, and *The Vantage Point; Perspectives of the Presidency*, but also in his daily actions as a citizen, a party leader and a public official; and

Whereas, no mere listing of the many achievements and proud accomplishments of Lyndon B. Johnson can describe adequately his compassion, his goodwill and his proven capability for leadership and growth within the framework of our American democracy; and

Whereas, many Oklahomans were fortunate enough to have known him well, and to have served with him during his long public career, so that it is with the special regard of neighbors and friends that we express our sincere admiration for the achievements of Lyndon Baines Johnson.

Now, therefore, be it resolved by the House of Representatives of the 1st session of the 34th Oklahoma Legislature, the senate concurring therein:

Section. 1. That the State of Oklahoma join the Nation and the World in recognition of the achievements and accomplishments of Lyndon Baines Johnson during his loyal tenure as a public official.

SEC. 2. That the State of Oklahoma and its citizens express their heartfelt sympathy and condolences to the family of former President Lyndon Baines Johnson.

SEC. 3. That this Concurrent Resolution be spread in full upon the pages of the House and Senate Journals of the 1st Session of the 34th Oklahoma Legislature.

SEC. 4. That duly authenticated copies of this Resolution, following consideration and enrollment, be prepared for and sent to:

Mrs. Lyndon B. Johnson, her daughters Lynda and Luci and their families;

The Lyndon B. Johnson Library at the University of Texas in Austin;

The Library of Congress;

President Richard M. Nixon;

Vice President SPIRO T. AGNEW;

Honorable MIKE MANSFIELD, Majority Leader, United States Senate;

Honorable CARL ALBERT, Speaker, United States House of Representatives.

Adopted by the House of Representatives the 24th day of January, 1973.

TRIBUTE TO SENATOR SAM ERVIN OF NORTH CAROLINA

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an article published in yesterday's New York Times, written by James M. Naughton, entitled "Ervin Assuming Leadership in Effort To Reassert the Authority of Congress."

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the New York Times, Feb. 4, 1973]

ERVIN ASSUMING LEADERSHIP IN EFFORT TO REASSERT THE AUTHORITY OF CONGRESS

(By James M. Naughton)

WASHINGTON, February 3.—Sam J. Ervin, Jr. has a jowly, lined face resembling the Appalachian foothills. He frequently slaps his thigh and chortles as he tells courthouse anecdotes, and at the age of 76, he would seem to be about as rebellious in nature as a retired country preacher.

But Mr. Ervin is the senior Senator from North Carolina, his bible is the United States Constitution—in its original form—and if the Congress does more this year than just talk about reasserting its authority, it will be largely because of Mr. Ervin.

"He is the man to watch this year," Senator Mike Mansfield, the majority leader, said the other day. "He'll have his hands full."

The Senate Judiciary Subcommittee on Separation of Powers, headed by Mr. Ervin, conducted hearings this week and will again next week on his proposal to require the President to spend money the way Congress appropriates it.

Another Judiciary subcommittee headed by Mr. Ervin will take up later this month an examination of Government efforts to force newsmen to reveal their sources of information. Mr. Ervin will also be chairman of a full-scale Senate investigation of charges that the Committee for the Re-election of the President conducted political espionage and sabotage last year.

WHITE HOUSE CONCERNED

In his spare moments, Senator Ervin will push for limits on the Nixon Administration's use of "executive privilege" to withhold testimony from Congressional committees, on the power of the White House to enter into "executive agreements" with other governments and on the President's use of the "pocket veto" to kill measures enacted by Congress.

"We're going to have trouble," one White House official said.

The reason for the official's concern is twofold: After years of acquiescence in the absorption of power at the White House, Congress is suddenly awash with rhetoric about a resulting "constitutional crisis"; and, after 18 years in the Senate, Mr. Ervin has acquired a reputation as its foremost consultant on the Constitution.

"I have been fighting for years to try to enforce the doctrine of separation of powers," the Senator said as he sat recently in his bookstrewn office.

Until now, Mr. Ervin said, Congress has seemed reluctant to do much more than "engage in a certain amount of intellectual bellyaching" about such matters as a President's refusal to spend money as Congress directs.

Thus, as he waggled his handlebar eyebrows and brushed ineffectually at stalks of chalk-toned hair that danced back across his forehead, he appeared to take an impish delight in the fact that what he views as excessive secrecy or arrogance in the Nixon

White House has gained new allies for his cause.

Mr. Ervin has 50 co-sponsors for a bill to require the President to release impounded appropriations unless Congress consents, within 60 days, to a request to withhold the money. Seventeen senior Democratic Senators joined him in filing a legal brief in support of a Missouri court test of the Administration's refusal to spend highway trust funds. The Senate Democratic Caucus voted unanimously to ask Mr. Ervin to lead the Watergate investigation.

At first glance, Mr. Ervin's Senate career seems full of contradictions and unlikely to make him the central figure in a campaign to raise Congress to a par with the executive and judiciary.

He filibustered against civil rights bills, but often initiated civil liberties legislation. He tried to defeat Federal housing programs, but challenged the President's refusal to spend the housing money. He backed the war in Vietnam, but fought Army surveillance of antiwar protesters. He came from the Bible Belt town of Morganton, N.C., but defended the Supreme Court ruling against prayer in public schools.

If there is a consistency in Mr. Ervin's record, it is that he views every bill he votes on in terms of his interpretation of the Constitution.

"I think," he said, "that apart from the faithful observance of the Constitution by the President, the Congress and the courts, our country has no protection against tyranny."

He recalls having gone through Harvard Law School backwards—third year first, then the second year and finally the first year classes—and would just as soon have the Supreme Court track back to the Constitution in its original form.

"Sometimes I think the Supreme Court's reversed everything I ever knew on the subject and left me in a state of total ignorance," Mr. Ervin said—with the same laugh he uses to embellish his cracker-barrel stories.

Amid quotations from Thomas Jefferson or James Madison, he is just as likely to cite Lum Garrison, the town philosopher of Morganton half a century ago: "The first time I ran for the Legislature, Lum told me. 'Pass no more laws and repeal half of those we got.' "

Mr. Ervin's homespun gentility may be his biggest asset. He does not raise his voice in committee hearings. He does not hammer on his desk as some colleagues do to underline their seriousness. Instead, Senator Ervin smiles.

When he smiled last Thursday and said that he was "considering" issuing subpoenas for two Cabinet members who were reluctant to testify before one of his subcommittees, a White House official sped to Mr. Ervin's office and promised that the Cabinet officers would appear.

The Senator smiled as he listened to Roy L. Ash, the new director of the White House Office of Management and Budget, testifying that the President had the right to withhold appropriated funds. Mr. Ervin made his point by instructing an aide to give Mr. Ash a blue, paperbound copy of the United States Constitution.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Does the Senator from Pennsylvania desire to be heard?

Mr. SCOTT of Pennsylvania. Mr. President, I yield back my time or I yield it to the Senator, from North Carolina (Mr. ERVIN), if he so desires.

(The remarks Senator ERVIN made at this point when he submitted Senate Resolution 60, dealing with the Presidential election of 1972, are printed in the Routine Business section of the RECORD under Submission of Resolution 60.)

CONGRESS SHOULD REVIEW PROPOSED RULES OF EVIDENCE FOR FEDERAL COURTS

Mr. ERVIN. Mr. President, in connection with the Senate's consideration of S. 583, a bill to provide Congress with sufficient time to consider carefully the newly proposed rules of evidence for the Federal courts, I ask unanimous consent that an excellent, preliminary review of these proposed rules in the form of a letter dated February 3, 1973, by Prof. Francis Paschal, of Duke University School of Law, be printed at this point in the CONGRESSIONAL RECORD.

Professor Paschall correctly suggests that the nature of and likely impact of the proposed rules are such that Congress, as well as the Supreme Court, has a clear responsibility to review them. I fully share his opinion that "a thorough legislative airing is needed" before these rules become operative.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DUKE UNIVERSITY, DURHAM, N.C.,
February, 3, 1973.

Hon. SAM J. ERVIN, Jr.,
U.S. Senate, Washington, D.C.

DEAR SENATOR ERVIN: I have been much pleased to read in the papers that you are not completely satisfied that the proposed new Federal Rules of Evidence should be allowed to become effective. I certainly am not so satisfied and without coming to a final conclusion about any particular rule, I am certain in my own mind that they should not be allowed to become effective without a thorough legislative consideration of the entire draft.

I say this because at least some of the Rules deal with problems which peculiarly call for an assessment which Congress is far better prepared to make than the Supreme Court, or any group of advisers the Court may summon to its aid. A conspicuous example is Rule 609(d) which allows juvenile adjudications to be offered in evidence in some circumstances, however much a particular state believes confidentiality is essential to the efficacy of its treatment of juveniles. So far as I know, this is not a problem to which the Court has ever addressed itself. Certainly, the states affected have had no chance to defend their views and can only have this chance if Congress gives it to them. Congress can look at this problem whole as the Court cannot. It is a matter plainly calling for the use of legislative resources.

Another example involving the considerations just stated is the Rules' treatment of privilege. Rule 504 favors a psychotherapist-patient privilege. It is beyond my understanding why this privilege is favored while others are restricted. Be that as it may, plainly we have a situation here calling for a legislative judgment informed by sources at the disposal of Congress but hardly available to the Court.

For somewhat different reasons, thorough legislative consideration is demanded as to a number of Rules that are new and would, I believe, create a new balance between plaintiffs and defendants. Some of these I am quite willing to approve of in the abstract but they cannot be so considered. One must bear in mind the *Erie* doctrine and the urge to forum-shopping certain to be engendered by these Rules. This must be the inevitable result of proposed Rule 702 dealing with expert testimony. On direct examination, the expert will be allowed to give his opinion without any evidentiary basis and without a showing of any personal knowledge. The burden will be shifted to the cross-examination. This may not be a bad idea but it marks a radical alteration in the burden traditionally borne by the opposing parties. Section 401 in respect to relevancy is also sure to increase the urge to shop for a federal forum and the same can be said for Rule 803d(6). This last Rule, it seems to me, should be rejected on its merits, or its lack of them. If I read it correctly, a plaintiff could on occasion get to the jury in a malpractice case simply by producing the hospital record. The declarant would never have been examined by anyone. Whatever virtues this Rule may have, it seems to me again to invoke a legislative judgment essentially, not merely as to the abstract wisdom of the Rule but as to whether it is desirable for the federal courts to function under a Rule so radically different from that prevailing in most states. The same notion is also particularly pertinent to Rule 301 dealing with presumptions.

These Rules suffer from another rather peculiar fault. They needlessly encourage grace constitutional questions. Rule 804d(1), for example, says that testimony given at a former hearing is admissible if the declarant was subject to cross-examination by a person "with motive and interest similar to those of the party" against whom it is offered. Obviously, it does not satisfy the Constitutional right to confront one's accusers to say that someone else had the opportunity.

There is much else one could say of these Rules as I am sure you realize. They bristle with difficulties and many seem to me down right wrong, however considered. In this category I put Rules 607 and 801d(1) when taken in combination. Rule 607 gives free rein to anyone to impeach any witness, including his own. Thus, if A, in a statement to police officers, incriminated B and B is charged, the prosecutor, even though he has later been told by A that A would on the stand repudiate his earlier statement, can, when he calls A as a witness, present A's earlier statement under Rule 801d(1). This last Rule says that a statement is not hearsay if "the declarant testifies at the trial or hearing . . . and the statement is inconsistent with his testimony." This seems to me to make it altogether too easy for a prosecutor to make his case but if I read the Rules correctly, this is exactly what is allowed. In any event, such possibilities cry out for Congressional consideration and I am hopeful that there will be a full scale, Rule by Rule, evaluation.

To sum up, if these Rules were merely Rules of Evidence, I would be less inclined to say that the Court's judgment is not to be accepted. But they are much more. They raise vital questions involving the rights of the states without the states having been heard. They achieve new balances between plaintiffs and prosecutors on the one hand and defendants on the other. They exacerbate the problem of forum shopping and are sure to provoke fresh demands on the resources of the Federal Courts. They needlessly encourage grave Constitutional questions. The responsibility in all these matters can best be exercised by Congress. In any event, a thorough legislative airing is needed.

I send you every good wish and all applause for the work you are doing.

Truly yours,

FRANCIS PASCHAL.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from Arkansas (Mr. McCLELLAN) is now recognized for not to exceed 15 minutes.

VACATING OF ORDER FOR SENATOR McCLELLAN TO SPEAK TODAY, AND ORDER FOR RECOGNITION OF SENATOR McCLELLAN AT THE SAME TIME TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, at the request of the distinguished Senator from Arkansas (Mr. McCLELLAN), that the order for him to speak today be vacated and that it be reinstituted for him tomorrow, in the same position on the program.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the distinguished Senator from West Virginia (Mr. ROBERT C. BYRD) is now recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield at this point to the distinguished senior Senator from Iowa (Mr. HUGHES) for the purpose of his presenting a visiting guest who is now in the Chamber.

VISIT TO THE SENATE BY VISCOUNT INGLEBY OF THE BRITISH HOUSE OF LORDS

Mr. HUGHES. Mr. President, it is my great privilege to have the honor to present to this distinguished body a visiting guest, the Right Honorable Viscount Ingleby, who is a Member of the British House of Lords.

He is a man who has accepted the responsibility of dealing with matters of conservation, forestry, and the moral problems of our day, which we all face and debate in the Senate.

Viscount Ingleby has attended many of our conferences here. He also attended the President's Prayer Breakfast last week and surrounding conferences. He did want to have the opportunity to visit the Senate Chamber. We are very happy to have him with us now.

[Applause, Senators rising.]

Mr. HUGHES. I thank the distinguished Senator from West Virginia for yielding me this time.

PROGRAM FOR THE REMAINDER OF THIS WEEK

Mr. SCOTT of Pennsylvania. Mr. President, will the Senator from West Virginia yield briefly?

Mr. ROBERT C. BYRD. I am happy to yield to the distinguished Republican leader.

Mr. SCOTT of Pennsylvania. May I inquire of the distinguished majority leader of the schedule for the remainder of this week?

Mr. ROBERT C. BYRD. I yield for that purpose.

Mr. MANSFIELD. I thank the distinguished Senator.

Mr. President, in response to the query of the distinguished minority leader, S. 518 is the unfinished business, which will be voted on at 2 o'clock this afternoon.

The second bill on the calendar, S. 267, to abolish the Joint Committee on Navajo-Hopi Indian Administration, has just been passed by the Senate.

The pending business is S. 38, a bill to amend the Airport and Airway Development Act of 1970.

It is anticipated that following the conclusion of that bill, the Senate will proceed to the consideration of calendar 20, S. 39, a bill to amend the Federal Aviation Act of 1958 to provide a more effective program to prevent aircraft piracy and for other purposes.

It is anticipated that the nomination of the Hon. Caspar Weinberger will be disposed of before the Senate concludes its business at the end of business on Thursday next.

In addition, we have the veterans' cemetery bill, which we understand will be reported by the Veterans Committee shortly.

Hopefully, we will be able to dispose of the Older Americans Act extension and the vocational rehabilitation bill.

A number of money resolutions, affecting every committee, will be reported this week, I understand, and will be considered on the floor before the recess begins at the conclusion of business on Thursday next.

Also, we will have the Engman nomination for Chairman of the Federal Trade Commission, and, as I have indicated, the Weinberger nomination for Secretary of Health, Education, and Welfare.

So there will be yea and nay votes. There is a busy schedule before we recess for the Lincoln day period, and I urge all Members to be at hand, so that these matters can be disposed of and the calendar kept as clean as possible.

Mr. SCOTT of Pennsylvania. I thank the distinguished majority leader.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for not to exceed 15 minutes.

(The remarks that Senator ROBERT C. BYRD made at this point on the introduction of S. 755, on reconfirmation of Cabinet officers, are printed in the Routine Business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Maryland is now recognized for not to exceed 15 minutes.

(The remarks Senator BEALL made at this point when he introduced S. 758, the Congressional Budget Control and Oversight Improvement Act, and the ensuing debate on a related subject, are printed in the routine business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The ACTING PRESIDENT pro tempore. At this time, under the previous order, the Senate will now have a period for the transaction of routine morning business not to extend beyond 1 p.m.

ORDER FOR RECOGNITION OF SENATORS ROBERT C. BYRD AND HUGHES TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that tomorrow, immediately following the remarks of the senior Senator from Arkansas (Mr. McCLELLAN), the junior Senator from West Virginia (Mr. ROBERT C. BYRD) be recognized for not to exceed 15 minutes, and that he be followed by the able senior Senator from Iowa (Mr. HUGHES) for not to exceed 15 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. TAFT. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The Senator from Ohio is recognized.

(The remarks Senator TAFT made at this point in the RECORD on the introduction of S. 756 and S. 757, dealing with the financial plight confronting the railroads, are printed in the routine business section of the RECORD under Statements on Introduced Bills and Joint Resolutions.)

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The PRESIDING OFFICER (Mr. HUDDLESTON) laid before the Senate the following letters, which were referred as indicated:

REPORT ON BUDGETARY RESERVES

(S. Doc. No. 93-4)

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on budgetary reserves, as of January 29, 1973; to the Committee on Appropriations, and ordered to be printed.

REPORT ON FEDERAL CONTRIBUTIONS PROGRAM, EQUIPMENT, AND FACILITIES, DEFENSE CIVIL PREPAREDNESS AGENCY

A letter from the Director, Defense Civil Preparedness Agency, transmitting, pursuant to law, a report on the Federal contributions program, equipment, and facilities, for the quarter ended December 31, 1972 (with an accompanying report); to the Committee on Armed Services.

REPORT ON ASSISTANCE-RELATED EXPENDITURES FOR LAOS

A letter from the Acting Assistant Secretary for Congressional Relations, Department of State, transmitting, pursuant to law, a report on assistance-related expenditures for Laos, during the second quarter of fiscal year 1973 (with an accompanying report); to the Committee on Armed Services.

PROPOSED UNIFORMED SERVICES RETIRED AND RETAINER PAY EQUALIZATION ACT

A letter from the General Counsel of the Department of Defense, transmitting a draft of proposed legislation to authorize equalization of the retired or retainer pay of certain members and former members of the uniformed services (with accompanying papers); to the Committee on Armed Services.

SUPPLEMENTAL LISTING RELATING TO CERTAIN PRESENT OR FORMER OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF DEFENSE

A letter from the Deputy Assistant Secretary of Defense, transmitting, pursuant to law, a supplemental listing of certain present or former officers and employees of the Department of Defense presently or formerly employed by certain defense contractors, fiscal year 1972 (with an accompanying report); to the Committee on Armed Services.

REPORT OF SECURITIES AND EXCHANGE COMMISSION

A letter from the Chairman, Securities and Exchange Commission, transmitting, pursuant to law, a report of that Commission, for the fiscal year 1972 (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION TO AUTHORIZE APPROPRIATIONS FOR THE PRESIDENT'S NATIONAL COMMISSION ON PRODUCTIVITY

A letter from the Secretary of the Treasury, transmitting a draft of proposed legislation to authorize appropriations for the President's National Commission on Productivity (with an accompanying paper); to the Committee on Banking, Housing and Urban Affairs.

PROPOSED LEGISLATION TO AMEND SECTION 404 OF THE NATIONAL HOUSING ACT

A letter from the Acting Chairman, Federal Home Loan Bank Board, transmitting a draft of proposed legislation to amend section 404 of the National Housing Act (with an accompanying paper); to the Committee on Banking, Housing and Urban Affairs.

REPORT OF NATIONAL TRANSPORTATION SAFETY BOARD

A letter from the Chairman, National Transportation Safety Board, transmitting, pursuant to law, a report of that Board in the case of Pan Alaska Airways, Ltc., Cessna 310C, N1812H, missing between Anchorage and Juneau, Alaska, dated October 16, 1972 (with an accompanying report); to the Committee on Commerce.

REPORT OF NATIONAL RAILROAD PASSENGER CORPORATION

A letter from the President, National Railroad Passenger Corp. (Amtrak), transmitting, pursuant to law, a report of that corporation, for the calendar year 1972 (with an accompanying report); to the Committee on Commerce.

PROPOSED DISTRICT OF COLUMBIA FREEWAY AIRSPACE UTILIZATION ACT

A letter from the Commissioner, District of Columbia, Washington, D.C., transmitting a draft of proposed legislation to authorize the Commissioner of the District of Columbia to lease airspace above and below freeway rights-of-way within the District of Columbia, and for other purposes (with an accompanying paper); to the Committee on the District of Columbia.

PROPOSED DISTRICT OF COLUMBIA INSURANCE ACT

A letter from the Commissioner, District of Columbia, Washington, D.C., transmitting a draft of proposed legislation to improve the laws relating to the regulating of insurance in the District of Columbia, and for other purposes (with an accompanying paper); to the Committee on the District of Columbia.

STATISTICAL APPENDIX TO ANNUAL REPORT OF THE SECRETARY OF THE TREASURY ON THE STATE OF THE FINANCES

A letter from the Secretary of the Treasury, transmitting, pursuant to law, a statistical appendix to the annual report of the Secretary of the Treasury on the state of the finances, for the fiscal year ended June 30, 1972 (with an accompanying document); to the Committee on Finance.

PERMANENT RESIDENCE STATUS FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders granting permanent resident status to certain aliens (with accompanying papers); to the Committee on the Judiciary.

REPORTS ON THIRD PREFERENCE AND SIXTH PREFERENCE CLASSIFICATION FOR CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, reports relating to third preference and sixth preference classifications for certain aliens (with accompanying papers); to the Committee on the Judiciary.

REPORT ON DEFECTOR ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders relating to defector aliens (with accompanying papers); to the Committee on the Judiciary.

SUSPENSION OF DEPORTATION OF CERTAIN ALIENS

Two letters from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, a copy of the order suspending deportation in the case of certain aliens (with accompanying papers); to the Committee on the Judiciary.

TEMPORARY ADMISSION INTO THE UNITED STATES OF CERTAIN ALIENS

A letter from the Commissioner, Immigration and Naturalization Service, Department of Justice, transmitting, pursuant to law, copies of orders relating to temporary admission into the United States of certain aliens (with accompanying papers); to the Committee on the Judiciary.

PROPOSED LEGISLATION TO ESTABLISH THE AMERICAN REVOLUTION BICENTENNIAL ADMINISTRATION

A letter from the Director, Office of Management and Budget, Executive Office of the President, transmitting a draft of proposed legislation to establish the American Revolution Bicentennial Administration, and for other purposes (with an accompanying paper); to the Committee on the Judiciary.

NOTICE OF PROPOSED RULES RELATING TO FAMILY CONTRIBUTION SCHEDULE FOR BASIC EDUCATIONAL OPPORTUNITY GRANTS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

A letter from the Acting Commissioner of Education, transmitting, pursuant to law, a notice of proposed rules relating to family contribution schedule for basic educational opportunity grants, for publication in the Federal Register (with accompanying papers); to the Committee on Labor and Public Welfare.

REPORT ON POSITIONS IN GRADES GS–16, GS–17, AND GS–18

A letter from the Director, Federal Bureau of Investigation, Department of Justice, reporting, pursuant to law, on positions in grades GS–16, GS–17, and GS–18 for the year 1972, (with accompanying papers); to the Committee on Post Office and Civil Service.

REPORT ON POSITIONS IN GRADES GS–16, GS–17, AND GS–18, ATTORNEY GENERAL'S OFFICE

A letter from the Assistant Attorney General for Administration, Department of Justice, transmitting, pursuant to law, a report on positions in grades GS–16, GS–17, and GS–18 (with accompanying papers); to the Committee on Post Office and Civil Service.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the PRESIDING OFFICER (Mr. HUDDLESTON):

A joint resolution of the Legislature of the State of Idaho; to the Committee on Labor and Public Welfare:

"IN THE HOUSE OF REPRESENTATIVES, HOUSE JOINT MEMORIAL NO. 2, BY EDUCATION COMMITTEE

"A joint memorial to the Honorable Senate and House of Representatives of the United States in Congress assembled and the Honorable Congressional delegation of the State of Idaho

"We, your Memorialists, the Senate and House of Representatives of the State of Idaho assembled in the First Regular Session of the Forty-second Idaho Legislature, do hereby respectfully represent that:

Whereas, the Legislature of the State of Idaho has become aware of questions related to the sufficiency of criteria relative to programs for federal assistance to higher and other educational programs within this state and other western states; and

"Whereas, the Legislature has found that formulae for distribution of federal moneys under such programs are based primarily upon the population factor without consideration to additional factors which directly relate to the cost of administration of such programs; and

"Whereas, the study of these distribution formulae has led the Legislature of the State of Idaho to the conclusion that they are inadequate.

"Now, therefore, be it resolved by the First Regular Session of the Forty-second Idaho Legislature, the House of Representatives and Senate concurring, that we most respectfully urge the Congress of the United States to reexamine the formulae now governing the distribution of federal assistance funds with consideration for such factors as the sparsity of population, the amounts of federal lands, the transportation costs incurred as a result of geographical distance, additional communication costs, and other costs which increase the administrative costs involved in such federal programs. An adjustment in the distribution formulae should be achieved which results in a more equal opportunity for expenditure on the substantive programs through the better recognition of factors contributing to the administrative costs.

"Be it further resolved that the Clerk of the House of Representatives be, and she is hereby authorized and directed to forward copies of this Memorial to the President of the Senate and the Speaker of the House of Representatives of Congress and to the Senators and Representatives representing this state in the Congress of the United States.

A concurrent resolution of the Legislature of the State of Indiana; to the Committee on Foreign Relations:

HOUSE CONCURRENT RESOLUTION NO. 30

Whereas, the families and friends of those individuals who have been listed as missing in action and as prisoner of war have suffered enormous grief, anxiety and torment; and

Whereas, the current publishing of name lists of prisoners of war has added to the

uncertainty of the status of those listed as missing in action; and

Whereas, there are still individuals who have not been listed either as prisoner of war or missing in action which omissions have created great stress upon the families and friends of those individuals: Therefore,

Be it resolved by the House of Representatives of the General Assembly of the State of Indiana the Senate concurring:

SECTION 1. The General Assembly of the State of Indiana does hereby request that every feasible action be undertaken to obtain speedy information about those individuals listed as missing in action and those individuals who have not been listed as missing in action or prisoner of war.

SEC. 2. A copy of this resolution shall be furnished to President Richard Nixon, Vice President Spiro Agnew, Secretary of Defense Melvin Laird, Senator Vance Hartke, Senator Birch Bayh, Representatives Ray J. Madden, Earl F. Landgrebe, John Brademas, J. Edward Roush, Elwood H. Hillis, William G. Bray, John T. Meyer, Roger H. Zion, Lee H. Hamilton, David W. Dennis and William H. Hudnut.

A concurrent resolution of the Legislature of the State of Oklahoma; ordered to lie on the table:

ENROLLED HOUSE CONCURRENT RESOLUTION No. 1008

A concurrent resolution noting the life and many accomplishments of the Honorable Lyndon Baines Johnson, 36th President of the United States of America; citing his achievements as a Congressman, Senator, Vice President, and President; noting his compassion and deep concern for his fellowman; expressing the sympathy and condolences of the people of Oklahoma to the family of former President Johnson; and directing distribution

Whereas, on January 22, 1973, the Omnipotent Lord of the Universe did summon his faithful and loyal servant Lyndon Baines Johnson, former Congressman, Senator, Vice President and 36th President of these United States; and

Whereas, it is appropriate that the State of Oklahoma join the remainder of the Nation and the World in recognition of the contributions to mankind made by Lyndon Baines Johnson throughout his years of public service; and

Whereas, Mr. Johnson was born on a farm near Stonewall, Texas, on August 27, 1908, graduated from high school in Johnson City, Texas, received his Bachelor of Science Degree from Southwest Texas State Teachers College at San Marcos, Texas, and attended Georgetown University Law School in Washington, D.C.; and

Whereas, Mr. Johnson taught public speaking in Houston High School from 1930 to 1932, served as secretary to Representative R. M. Kleberg from 1932 to 1935, and was appointed Texas State Administrator of the National Youth Administration by President Franklin D. Roosevelt in 1935; and

Whereas, Lyndon B. Johnson, following the example of his father and grandfather who served in the Texas Legislature, sought and won election to Congress in 1937, and was then reelected to five full terms; and

Whereas, Mr. Johnson was elected to the United States Senate in 1948, and was reelected in 1954, becoming his party's whip in 1951 and Majority Leader in 1953; and

Whereas, he was a member of the U.S. Naval Reserve and served in the United States Navy as a Lieutenant Commander in 1941–42, winning the Silver Star for bravery in action; and

Whereas, Mr. Johnson was Texas' favorite son for the Democratic presidential nomination in 1956, and was selected as the vice-presidential nominee in 1960; and

Whereas, Lyndon B. Johnson proved to be a tireless campaigner during the election and a hard-working Vice President when elected, representing President John F. Kennedy abroad and serving as Chairman of the President's Committee on Equal Employment Opportunity and as a member of numerous advisory boards governing the areas of national security, space and technology, and the Peace Corps; and

Whereas, Lyndon B. Johnson succeeded John F. Kennedy in the Presidency on November 22, 1963, and quickly moved to complete the programs he had helped mold as Vice President, including those in the areas of civil rights, antipoverty, tax reduction, national defense, and education; and

Whereas, winning election to a full term in 1964, Mr. Johnson, his firm and resolute character further shaped by the crucible of the Presidency, determined to complete the platform of the "New Frontier," and to expand upon its goals many times over through the worthy "Great Society" program, insuring a greater measure of social and economic justice for all Americans; and

Whereas, President Johnson guaranteed to all citizens more self-respect and a higher degree of participation in the tasks and benefits of society through the enactment of measures on voting rights, medicare, veterans benefits, social security, minimum wages and rent supplements; and

Whereas, he showed keen foresight and great innovative capacity in new programs for elementary and secondary education, higher education, transportation planning, housing and urban development, model cities, air and water pollution, and development of parks and recreation land—all areas which have the most vital impact upon the quality and style of American life; and

Whereas, the fruits of the foregoing programs could readily be seen in an increased gross national product, drop in unemployment rates coupled with the creation of over seven million new jobs, and an increase of $180 billion in disposable personal income for the people of this country; and

Whereas, President Johnson increased communication and understanding between all the people of the world, and gave them an enlarged share of freedom and security through such devices as the Peace Corps, Food for Freedom, the Alliance for Progress, the Nuclear Test Ban Treaty, and a far-reaching space program; and

Whereas, as President, Mr. Johnson led the Nation through a period of extreme danger from external enemies, and bore well the difficult burden of leadership of the free world in its fight to resist Communist domination; and

Whereas, President Johnson's concern for the well-being of the American people was indicated not only in his writings, including *This America, A Time for Action,* and *The Vantage Point; Perspectives of the Presidency,* but also in his daily actions as a citizen, a party leader and a public official; and

Whereas, no mere listing of the many achievements and proud accomplishments of Lyndon B. Johnson can describe adequately his compassion, his goodwill and his proven capability for leadership and growth within the framework of our American democracy; and

Whereas, many Oklahomans were fortunate enough to have known him well, and to have served with him during his long public career, so that it is with the special regard of neighbors and friends that we express our sincere admiration for the achievements of Lyndon Baines Johnson.

Now, therefore, be it resolved by the House of Representatives of the 1st session of the 34th Oklahoma Legislature, the Senate concurring therein:

SECTION 1. That the State of Oklahoma join the Nation and the World in recognition of the achievements and accomplishments of Lyndon Baines Johnson during his loyal tenure as a public official.

SEC. 2. That the State of Oklahoma and its citizens express their heartfelt sympathy and condolences to the family of former President Lyndon Baines Johnson.

SEC. 3. That this Concurrent Resolution be spread in full upon the pages of the House and Senate Journals of the 1st Session of the 34th Oklahoma Legislature.

SEC. 4. That duly authenticated copies of this Resolution, following consideration and enrollment, be prepared for and sent to:

Mrs. Lyndon B. Johnson, her daughters Lynda and Luci and their families;

The Lyndon B. Johnson Library at the University of Texas in Austin;

The Library of Congress;

President Richard M. Nixon;

Vice President Spiro T. Agnew;

Honorable Mike Mansfield, Majority Leader, United States Senate;

Honorable Carl Albert, Speaker, United States House of Representatives.

Adopted by the House of Representatives the 24th day of January, 1973.

Adopted by the Senate the 29th day of January, 1973.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ERVIN, from the Committee on the Judiciary, without amendment:

S. 583. A bill to promote the separation of constitutional powers by securing to the Congress additional time in which to consider the Rules of Evidence for United States Courts and Magistrates, the Amendments to the Federal Rules of Civil Procedure, and the Amendments to the Federal Rules of Criminal Procedure which the Supreme Court on November 20, 1972, ordered the Chief Justice to transmit to the Congress (Rept. No. 93–14).

By Mr. MOSS, from the Committee on Aeronautical and Space Sciences, with amendments:

S.J. Res. 37. Joint resolution to designate the Manned Spacecraft Center in Houston, Texas, as the "Lyndon B. Johnson Space Center," in honor of the late President (Rept. No. 93–15).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. SCOTT of Pennsylvania (for himself, Mr. BIBLE, Mr. BROCK, Mr. CASE, Mr. CRANSTON, Mr. FANNIN, Mr. GOLDWATER, Mr. GURNEY, Mr. HUMPHREY, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. MCINTYRE, Mr. PASTORE, Mr. PELL, Mr. SCHWEIKER, Mr. STEVENS, Mr. THURMOND, Mr. TUNNEY, Mr. WILLIAMS, Mr. YOUNG, Mr. HANSEN, and Mr. BAKER):

S. 752. A bill to incorporate Pop Warner Little Scholars, Incorporated. Referred to the Committee on the Judiciary.

By Mr. SCOTT of Pennsylvania (for himself, Mr. SCHWEIKER and Mr. ABOUREZK):

S. 753. A bill to amend the Disaster Relief Act of 1970 with respect to eligibility for relocation assistance. Referred to the Committee on Public Works.

By Mr. ERVIN (for himself, Mr. BAYH, Mr. BEALL, Mr. BENNETT, Mr. BENT-

SEN, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MATHIAS, Mr. MCCLELLAN, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. ROTH, Mr. STEVENS, Mr. STEVENSON, Mr. TALMADGE, Mr. THURMOND, Mr. TUNNEY, and Mr. WILLIAMS):

S. 754. A bill to give effect to the sixth amendment right to a speedy trial for persons charged with criminal offenses and to reduce the danger of recidivism by strengthening the supervision over persons released pending trial, and for other purposes. Referred to the Committee on the Judiciary.

By Mr. ROBERT C. BYRD:

S. 755. A bill to provide 4-year terms for the heads of the executive departments. Referred to the Committee on Government Operations.

By Mr. TAFT:

S. 756. A bill to amend part I of the Interstate Commerce Act in order to revise the procedures for the abandonment of railroad lines, and for the establishment or revision of rates, fares, and charges for the transportation of property, by common carriers by railroad. Referred to the Committee on Commerce.

S. 757. A bill to amend the Railway Labor Act to promote railway efficiency, to provide increased compensation for railway employees, to decrease the possibility of the disruption of railway transportation, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. BEALL:

S. 758. A bill to improve and strengthen the role of Congress with respect to budget control and oversight matters. Referred to the Committee on Government Operations.

By Mr. GOLDWATER:

S. 759. A bill to help relieve the burden of high property taxes by allowing each homeowner a credit against his Federal income tax for property taxes paid for the support of public schools. Referred to the Committee on Finance.

By Mr. BROCK:

S. 760. A bill to amend the emergency loan program under the Consolidated Farm and Rural Development Act, and for other purposes. Referred to the Committee on Agriculture and Forestry.

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 761. A bill to amend the Act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. HARTKE (for himself, Mr. PASTORE, Mr. RIBICOFF, Mr. THURMOND, Mr. MAGNUSON, Mr. GURNEY, Mr. TOWER, Mr. MCGEE, Mr. MOSS, Mr. BEALL, Mr. CHILES, Mr. NUNN, Mr. ABOUREZK, Mr. CRANSTON, Mr. HELMS, Mr. ALLEN, and Mr. HOLLINGS):

S. 762. A bill to authorize recomputation at age 60 of the retired pay of members and former members of the uniformed services whose retired pay is computed on the basis of pay scales in effect prior to January 1, 1972, and for other purposes. Referred to the Committee on Armed Services.

By Mr. MOSS:

S. 763. A bill to amend title XIX of the Social Security Act to require any nursing home, which provides services under State plans approved under such title, fully to disclose to the State licensing agency the identity of each person who has any ownership interest in such home or is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such home. Referred to the Committee on Finance.

S. 764. A bill to amend title VII of the Public Health Service Act to provide for the making of grants to schools of medicine to assist them in the establishment and operation of departments of geriatrics. Referred to the Committee on Labor and Public Welfare.

S. 765. A bill to amend title VII of the Public Health Service Act to train certain veterans, with appropriate experience as paramedical personnel, to serve as medical assistants in long-term health care facilities. Referred to the Committee on Labor and Public Welfare.

S. 766. A bill to amend title VII of the Public Health Service Act to provide for the making of grants to appropriate colleges and universities to assist them in the establishment and operation of programs for the training of physicians' assistants. Referred to the Committee on Labor and Public Welfare.

By Mr. FANNIN (for himself and Mr. GOLDWATER):

S. 767. A bill to facilitate the incorporation of the reclamation townsite of Page, Ariz., Glen Canyon unit, Colorado River storage project, as a municipality under the laws of the State of Arizona, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

By Mr. HARTKE (for himself, Mr. WEICKER, Mr. PELL, Mr. KENNEDY, Mr. JAVITS, Mr. SCOTT of Pennsylvania, Mr. RIBICOFF, Mr. PASTORE, Mr. BEALL, Mr. BIDEN, Mr. WILLIAMS, and Mr. BROOKE):

S. 768. A bill to provide improved high-speed rail passenger service between Boston, New York, and Washington, by 1976. Referred to the Committee on Commerce.

By Mr. TUNNEY:

S.J. Res. 50. A joint resolution authorizing the President to proclaim the last week in June of each year as "National Autistic Children's Week." Referred to the Committee on the Judiciary.

By Mr. JACKSON (for himself, Mr. BIBLE, and Mr. MATHIAS):

S.J. Res. 51. A joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning May 6, 1973, as "National Historic Preservation Week." Referred to the Committee on the Judiciary.

By Mr. BEALL:

S.J. Res. 52. A joint resolution to provide for the designation of the week of February 11 to 17, 1973, as "National Vocational Education Week." Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCOTT of Pennsylvania (for himself, Mr. BIBLE, Mr. BROCK, Mr. CASE, Mr. CRANSTON, Mr. FANNIN, Mr. GOLDWATER, Mr. GURNEY, Mr. HUMPHREY, Mr. JAVITS, Mr. MATHIAS, Mr. METCALF, Mr. MCINTYRE, Mr. PASTORE, Mr. PELL, Mr. SCHWEIKER, Mr. STEVENS, Mr. THURMOND, Mr. TUNNEY, Mr. WILLIAMS, Mr. YOUNG, Mr. HANSEN, and Mr. BAKER):

S. 752. A bill to incorporate Pop Warner Little Scholars, Incorporated. Referred to the Committee on the Judiciary.

Mr. SCOTT of Pennsylvania. Mr. President, it gives me pleasure to introduce legislation similar to that which I sponsored in the 92d Congress to provide a Federal charter for Pop Warner junior league football.

I support this program because of its great value not only to the youth of Pennsylvania, but to young people in over 30 of these United States.

The nonprofit charter granted by the Commonwealth of Pennsylvania in 1959 is no longer sufficient to cover the greatly expanded Pop Warner football program.

The principles promoted by Glenn S. "Pop" Warner—physical fitness, cooperative teamplay, self-discipline, and scholastic achievement—are being carried on in the Pop Warner junior league football program, making it a truly worthwhile endeavor.

I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 752

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That Herbert Barnes, 1352 Easton Road, Warrington, Pennsylvania; Joseph J. Tomlin, 1004 Western Saving Fund Building, Philadelphia, Pennsylvania; E. J. Carroll, 611 Shipton Lane, Bryn Mawr, Pennsylvania; G. Martin Brill Watts, 571 Sycamore Mills Road, Media, Pennsylvania; James T. Bryan, Junior, 67 Wall Street, New York, New York; Milton Clark, 5401 Walnut Street, Philadelphia, Pennsylvania; George M. Ewing, Junior, 611 Maplewood Road, Wayne, Pennsylvania; Donald C. Osgood, 1000 Miramar Place, Fullerton, California; Anthony F. Visco, Junior, 1418 Packard Building, Philadelphia, Pennsylvania; Maurie H. Orodenker, 6004 North 13th Street, Philadelphia, Pennsylvania; Charles A. Barsuglia, 7246 Marsden Street, Philadelphia, Pennsylvania; Stanley M. Bednarek, 2607 East Allegheny Avenue, Philadelphia, Pennsylvania; Mitchell N. Daroff, Rittenhouse Plaza Apartments, Philadelphia, Pennsylvania; John D. Scott, City Hall, Philadelphia, Pennsylvania; David G. Tomlin, 3664 Richmond Street, Philadelphia, Pennsylvania; and their successors, are hereby created and declared to be a body corporate by the name of Pop Warner Little Scholars, Incorporated (hereafter in this Act referred to as the "corporation"), and by such name shall be known and have perpetual succession. Such corporation shall have the powers and be subject to the limitations and restrictions contained in this Act.

COMPLETION OF ORGANIZATION

SEC. 2. A majority of the persons named in the first section of this Act are authorized to complete the organization of the corporation by the selection of officers and employees, the adoption of bylaws, and the doing of such other acts as may be necessary to complete the organization of the corporation.

OBJECTS AND PURPOSES OF CORPORATION

SEC. 3. The objects and purposes of the corporation shall be—

(1) to inspire youth, regardless of race, creed, or color, to practice the ideals of sportsmanship, scholarship, and physical fitness; and

(2) to bring youth closer together through the means of common interest in sportsmanship, scholarship, fellowship, and athletic competition.

CORPORATE POWERS

SEC. 4. (a) The corporation shall have power—

(1) to sue and be sued, complain, and defend in any court of competent jurisdiction;

(2) to adopt, alter, and use a corporate seal;

(3) to appoint and fix the compensation of such officers and employees as its business may require and define their authority and duties;

(4) to adopt and amend bylaws, not inconsistent with this Act or any other law of the United States or any State in which it is to operate, for the management of its property and the regulations of its affairs;

(5) to make and carry out contracts;

(6) to charge and collect membership dues, subscription fees, and receive contributions or grants of money or property to be devoted to the carrying out of its purposes;

(7) to acquire by purchase, lease, or otherwise, such real or personal property, or any interest therein, wherever situated, necessary or appropriate for carrying out its objects and purposes and subject to the provisions of law of the State in which such property is situated (A) governing the amount or kind of real or personal property which similar corporations chartered and operated in such State may hold, or (B) otherwise limiting or controlling the ownership of real or personal property by such corporations;

(8) to transfer, lease, and convey real or personal property;

(9) to borrow money for its corporate purposes, issue bonds therefor, and secure the same by mortgage, deed of trust, pledge, or otherwise, subject to all applicable provisions of Federal or State law; and

(10) to do any other acts necessary and proper to carry out its objects and purposes.

(b) For the purpose of this section, the term "State" includes the District of Columbia.

PRINCIPAL OFFICE; SCOPE OF ACTIVITIES; DISTRICT OF COLUMBIA AGENT

SEC. 5. (a) The principal office of the corporation shall be located in Philadelphia, Pennsylvania, or in such other place as may later be determined by the board of directors, but the activities of the corporation shall not be confined to that place, but may be conducted throughout the United States.

(b) The corporation shall maintain at all times in the District of Columbia a designated agent authorized to accept service of process for the corporation. Service upon, or notice mailed to the business address of, such agent, shall be deemed notice to or service upon the corporation.

MEMBERSHIP

SEC. 6. Eligibility for membership in the corporation and the rights and privileges of members shall, except as provided in this Act, be as set forth in the bylaws of the corporation.

BOARD OF DIRECTORS; COMPOSITION; RESPONSIBILITIES

SEC. 7. (a) Upon enactment of this Act, the membership of the initial board of directors of the corporation shall consist of the persons named in the first section of this Act.

(b) The initial board of directors shall hold office until the first election of a board of directors. The number, manner of selection (including filling of vacancies), term of office, and powers and duties of the directors shall be set forth in the bylaws of the corporation. The bylaws shall also provide for the selection of a chairman and his term of office.

(c) The board of directors shall be the governing board of the corporation, and a quorum thereof shall be responsible for the general policies and programs of the corporation and for the control of all funds of the corporation. The board of directors may appoint committees to exercise such powers as may be prescribed in the bylaws or by resolution of the board of directors.

OFFICERS; ELECTION OF OFFICERS

SEC. 8. The officers of the corporation shall be those provided in the bylaws. Such officers shall be elected in such manner, for such terms, and with such duties, as may be prescribed in the bylaws of the corporation.

USE OF INCOME; LOANS TO OFFICERS, DIRECTORS, OR EMPLOYEES

SEC. 9. (a) No part of the income or assets of the corporation shall inure to any member, officer, or director or be distributable to any such person during the life of the corporation or upon its dissolution or final liquidation. Nothing in this subsection, however, shall be construed to prevent the payment of reasonable compensation to officers of the corporation or reimbursement for actual necessary expenses in amounts approved by the corporation's board of directors.

(b) The corporation shall not make loans to its members, officers, directors, or employees. Any director who votes for or assents to the making of such a loan, and any officer who participates in the making of such a loan, shall be jointly and severally liable to the corporation for the amount of such a loan until the repayment thereof.

NONPOLITICAL NATURE OF CORPORATION

SEC. 10. The corporation and its officers and directors as such shall not contribute to, support, or otherwise participate in any political activity or in any manner attempt to influence legislation.

LIABILITY FOR ACTS OF OFFICERS AND AGENTS

SEC. 11. The corporation shall be liable for the acts of its officers and agents when acting within the scope of their authority.

PROHIBITION AGAINST ISSUANCE OF STOCK OR PAYMENT OF DIVIDENDS

SEC. 12. The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

BOOKS AND RECORDS INSPECTION

SEC. 13. The corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors, and committees having authority under the board of directors, and it shall also keep at its principal office a record of the names and addresses of its members entitled to vote. All books and records of the corporation may be inspected by any member entitled to vote, or his agent or attorney, for any proper purpose, at any reasonable time.

AUDIT OF FINANCIAL TRANSACTIONS

SEC. 14. The provisions of sections 2 and 3 of the Act of August 30, 1964 (36 U.S.C. 1102, 1103), entitled "An Act to provide for audit of accounts of private corporations established under Federal law" shall apply with respect to the corporation.

USE OF ASSETS ON DISSOLUTION OR LIQUIDATION

SEC. 15. Upon dissolution or final liquidation of the corporation, after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets of the corporation may be distributed in accordance with the determination of the board of directors of the corporation and in compliance with this Act, the bylaws of the corporation, and all other Federal and State laws applicable thereto.

TRANSFER OF ASSETS

SEC. 16. The corporation may acquire any and all of the assets of the Pennsylvania corporation known as "Pop Warner Little Scholars", upon discharging or satisfactorily providing for the payment and discharge of all the liabilities of such corporation, and upon complying with all laws of the State of Pennsylvania.

EXCLUSIVE RIGHT TO NAME, EMBLEMS, SEALS, AND BADGES

SEC. 17. The corporation shall have the sole and exclusive right to use the name "Pop Warner Little Scholars", and to have and to use such emblems, seals, and badges as may be required in carrying out its program. Nothing in this section shall be construed to interfere or conflict with established or vested rights.

COMPLIANCE WITH STATE AND FEDERAL REGULATIONS

SEC. 18. The corporation shall continue to comply with the laws, rules, and regulations governing nonprofit organizations issued by the Commonwealth of Pennsylvania including, but not limited to, the filing of annual financial and other reports with the appropriate State office as may be requested. The corporation shall continue to be subject to the laws of Pennsylvania applicable to nonprofit organizations as well as the Federal laws applicable to corporations chartered by Congress.

RESERVATIONS OF RIGHT TO AMEND OR REPEAL CHARTER

SEC. 19. The right to alter, amend, or repeal this Act is expressly reserved.

By Mr. SCOTT of Pennsylvania (for himself, Mr. SCHWEIKER, and Mr. ABOUREZK):

S. 753. A bill to amend the Disaster Relief Act of 1970 with respect to eligibility for relocation assistance. Referred to the Committee on Public Works.

Mr. SCOTT of Pennsylvania. Mr. President, I am today introducing a bill to deal with a serious inequity which has developed with reference to acquiring land for federally assisted projects in flood plain areas affected by tropical storm Agnes and other floods of last year. Sections 203 and 204 of the 1970 Uniform Relocation Assistance Act authorize replacement housing payments up to $15,000 to owner occupants, and up to $4,000 for tenant occupants. The problem is with the limitations in these sections of the act which requires actual occupancy for a period prior to initiation of negotiations for acquisition of 180 days in the case of owners and 90 days for tenants. Actual occupancy is precluded in many cases by virtue of flood damage.

Section 254 of the Disaster Relief Act of 1970 appears to exempt HUD urban renewal projects from the occupancy requirements in cases of natural disasters. However, other projects such as HUD Open Space, Bureau of Outdoor Recreation grants for parks, Forest Service multiple use projects, Department of Transportation relocation of roads or bridges, Economic Development Administration public facilities and Corps of Engineer projects are not exempt from the occupancy requirement in disaster areas.

Apparently, such disaster situations were not considered when the Uniform Relocation Assistance Act was drafted. The purpose of the occupancy limitation appears to have been to prevent windfalls to individuals who might move in when a project is announced. It certainly was not the intention of Congress to intentionally discriminate against flood disaster victims displaced by projects other than urban renewal.

Mr. President, as I said before, this bill corrects an inequity in the law. The

administration has recognized this and fully supports the bill's enactment. I hope that we might be able to have our Public Works Committee grant this bill expedited treatment in order to speed the assistance to flood damaged areas of the country.

By Mr. ERVIN (for himself, Mr. BAYH, Mr. BEALL, Mr. BENNETT, Mr. BENTSEN, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. CANNON, Mr. CASE, Mr. CHILES, Mr. CHURCH, Mr. CRANSTON, Mr. EAGLETON, Mr. FONG, Mr. GURNEY, Mr. HART, Mr. HATFIELD, Mr. HOLLINGS, Mr. HUGHES, Mr. HUMPHREY, Mr. INOUYE, Mr. JACKSON, Mr. JAVITS, Mr. KENNEDY, Mr. MAGNUSON, Mr. MATHIAS, Mr. MCCLELLAN, Mr. MCGEE, Mr. MCGOVERN, Mr. MCINTYRE, Mr. MONDALE, Mr. MOSS, Mr. MUSKIE, Mr. NELSON, Mr. PACKWOOD, Mr. PASTORE, Mr. PELL, Mr. PERCY, Mr. RANDOLPH, Mr. ROTH, Mr. STEVENS, Mr. STEVENSON, Mr. TALMADGE, Mr. THURMOND, Mr. TUNNEY, and Mr. WILLIAMS):

S. 754 A bill to give effect to the sixth amendment right to a speedy trial for persons charged with criminal offenses and to reduce the danger of recidivism by strengthening the supervision over persons released pending trial, and for other purposes. Referred to the Committee on the Judiciary.

SPEEDY TRIAL ACT OF 1973

Mr. ERVIN. Mr. President, on behalf of the senior Senator from Michigan, (Mr. HART), and Senators BAYH, BEALL, BENNETT, BENTSEN, BIBLE, BROOKE, BURDICK, CANNON, CASE, CHILES, CHURCH, CRANSTON, EAGLETON, FONG, GURNEY, HATFIELD, HOLLINGS, HUGHES, HUMPHREY, INOUYE, JACKSON, JAVITS, KENNEDY, MAGNUSON, MATHIAS, MCCLELLAN, MCGEE, MCGOVERN, MCINTYRE, MONDALE, MOSS, MUSKIE, NELSON, PACKWOOD, PASTORE, PELL, PERCY, RANDOLPH, ROTH, STEVENS, STEVENSON, TALMADGE, THURMOND, TUNNEY, WILLIAMS, and myself, I introduce for appropriate reference a bill to give effect to the sixth amendment right to a speedy trial for persons charged with criminal offenses and to reduce the danger of recidivism by strengthening the supervision over persons released pending trial, and for other purposes.

During the past decade, the Congress and many State legislatures have concentrated their energies upon reform of State and Federal criminal justice systems. Despite all of this attention our criminal courts are still in an essentially dilapidated state. Legislators, the general public, and the criminal element know that swift punishment for criminal activity is unlikely, if not impossible, in most parts of this country. In the Federal system the average criminal case is not brought to trial until almost a year after arrest. The bill I introduce today proposes a decisive, although perhaps to some a drastic, strategy to end this quagmire in the Federal courts.

The "pursuit of happiness" is impossible when citizens cannot depend upon the law and the legal system to preserve their civil liberties and personal safety. The brutal truth is that the Nation's criminal justice systems, both State and Federal, do not protect the rights of men, whether victim or accused.

I need not recite the catalog of failures in the administration of criminal courts. All of us receive scores of complaints every week from anguished citizens who have been victimized by criminals only to see them go unpunished months upon end or not at all. We each hear the pitiful stories of defendants, held in jail for months—even years—before they are tried, much less even convicted of a crime.

The anguish and frustration is not limited to defendants and victims. Consider this startling confession by a criminal court judge in a major urban center:

I remain terribly frustrated and increasingly annoyed with this court. We are being pressured constantly to "produce," which means forcing pleas to lesser charges just to dispose of cases. I feel like a fool and a clerk in a bargain basement, and part of the terrible system, helping in the denigration of our brilliant judicial heritage. I don't know how much longer I can take this. . . .

Those remarks were reprinted in a book entitled "Justice is the Crime Pretrial Delay in Felony Cases," by Prof. Lewis Katz of Case Western Reserve Law School. Professor Katz uses even stronger language to describe the denigration of our criminal courts,

Felony trial courts are reduced to auctions where successive bids are made until one is finally accepted. The auction process invariably compromises and often totally disregards both the defendant whose freedom is at stake and the community whose security is in jeopardy.

Professor Katz is only one of many experts who have spent years of their professional lives studying the crisis in our criminal justice system. Each expert has a different explanation for the deterioration of the system and each has his own plan for its repair. However, a surprising number of these experts, including Professor Katz, has reached a general agreement on these issues. They view the crisis in the courts in terms of workload. In Professor Katzwords:

In the course of two centuries, as a result of conditions that the system could neither control nor influence, it has been overwhelmed by the problems of urbanization, overpopulation, and the depersonalization of society.

The courts, undermanned, starved for funds, and utilizing 18th Century management techniques, simply cannot cope with burgeoning caseloads. The consequence is delay and plea bargaining. The solution is to create initiative within the system to utilize modern management techniques and to provide additional resources to the courts where careful planning so indicates.

The Federal and State legislatures can create this initiative by enacting time limit requirements for each stage in the criminal process. The time limits should be enforced by judges empowered to sanction prosecutors for delay by dismissing the indictment if trial does not occur within the limits and empowered to sanction defense counsel who engage in deliberate dilatory tactics. The time limits plus sanctions system should be related to the appropriations process in the legislature so that each court could count on sufficient resources to achieve the goals set out in the time limits by the legislature.

The Subcommittee on Constitutional Rights has been studying the crisis in the criminal courts for well over 2 years and we have come to the same conclusion as Professor Katz and his colleagues. During the past two Congresses the subcommittee has been considering a bill, S. 895, in the last Congress, which would enact the scheme set out above.

The purpose of the bill is to make effective the sixth amendment right to a speedy trial in Federal criminal cases by requiring that each Federal district court establish a plan for trying criminal cases within 60 days of arrest or receipt of summons. The bill takes effect in four phases. For the first year after enactment, detained defendants must be tried within 90 days or released; during the second year all defendants must be tried within 180 days or have their cases dismissed; during the third year all defendants must be tried within 120 days or have their cases dismissed; and, finally after the end of the third year all trials must be within 60 days. Each district must file a plan with the judicial conference for the implementation of the second, third, and fourth phases stating what additional resources, personnel, and facilities will be required. This in turn will enable Congress to consider the precise needs of each district and the Federal judiciary as a whole.

Along with its provision for speedy trials, S. 895 also authorizes the creation of demonstration "Pretrial Services Agencies" in 10 Federal districts, excluding the District of Columbia which is already served by the District of Columbia Bail Agency and which is performing essentially the same functions. These agencies will make bail recommendations, supervise persons on bail and assist them with employment, medical and other services designed to reduce crime on bail. This provision will greatly enhance the operations of the Bail Reform Act of 1966.

On October 6 of last year the subcommittee approved this bill with six basic modifications, a list of which has been inserted at the conclusion of my remarks. The bill which I, along with 46 cosponsors, introduce today is identical to the bill approved by the subcommittee.

The approach adopted by the subcommittee last Congress is based upon its study of speedy trial schemes under active consideration or presently being used on both the State and Federal level. In the subcommittee's judgment the overburdened criminal justice system can only be relieved by encouraging the system to use existing resources more efficiently before committing the additional resources clearly shown to be required. The most attractive feature in the schemes examined by the subcommittee is that they placed upon the criminal justice system an affirmative duty to pro-

vide a speedy trial for the benefit of society and the defendant. Enactment of this bill would represent the creation by statute of such an affirmative duty for the Federal criminal justice system. Congress would be interpreting the sixth amendment as requiring the Federal system to assure speedy trial, defined as trial within 60 days of arrest for the average noncomplex criminal case. If such a system proved workable in the Federal system in noncomplex cases, it might provide a model for State and municipal criminal justice systems in common law felony cases.

In enacting this legislation, Congress on behalf of the American people would be directing all the participants in the criminal justice system to achieve 60-days trials within 3 years. This direction is given teeth by the requirement of mandatory dismissals with prejudice for failure to meet this goal. But the bill also is a commitment by Congress to provide the necessary resources to the court system to enable them to achieve speedy trial, once the courts, through their plans, have made the most efficient allocation of existing resources and presented Congress with a precise statement of what most is needed and how it will be used.

The reason why the subcommittee decided to recommend statutory time limits plus sanctions is that the mere existence of the technology necessary to unclog the court calendars and even the existence of court personnel trained in that technology will not by themselves result in speedy trial. Only when the system is committed to the goal of speedy trial will these techniques and personnel be put to work. The system is not actually committed to the goal of speedy trial unless judges, prosecutors, and defense counsel are held accountable for the failure to achieve speedy trial.

And the most effective means to hold judges, prosecutors, and defense counsel accountable for speedy trial is through the use of sanctions. The dismissal sanction has the effect of compelling judges and prosecutors to choose between speedy trial or no prosecution whatsoever. The sanctions for defense counsel are designed to remind them that there is no "constitutional right" to delay trials for the purpose of frustrating justice.

Sanctions alone are not necessarily sufficient to commit the system to speedy trial. There will not be dramatic movement toward speedy trial unless both the courts and the prosecutor's office are covered by the time limits. This is not the case in most of the time limits schemes examined by the subcommittee. Cases in point are the rule adopted by the U.S. Court of Appeals for the Second Circuit, and the statute recently adopted in New York. In both, time limits plus a dismissal sanction have been adopted, but the sanction applies only where the prosecutor is not ready for trial within the time limits.

The "ready rule" means that even if the prosecution is prepared to go to trial but the court is so congested that it cannot provide a judge to hear the pretrial motions or the trial itself, the sanction cannot be applied. The effect of this provision is to allow court congestion to nullify the speedy trial rules. Other speedy trial plans allow for suspension of the time limits and sanctions for "good cause." "Good cause" has also been interpreted to excuse court congestion. This bill avoids these pitfalls. The dismissal sanction applies even if there is court congestion, for that is the very problem the bill is designed to address.

Of course, it would be grossly unjust to legislate a scheme of time limits plus sanction without exceptions for congestion if no mechanism were created to provide resources for the courts to deal with their overloaded dockets. Where there is no link between a speedy trial statute and the appropriation process, the courts and the prosecutors are faced with the option of fierce public reaction resulting from dismissals for failure to meet the time limits or simply ignoring the statute.

However, this bill provides the vital link with the appropriations process through an elaborate planning and reporting process by the district courts. Each district court devises a speedy trial plan. The plans required by the bill would also summarize any additional resources necessary in the court, the U.S. Attorney's Office, and the Public Defender Office. These reports are summarized and approved by the judicial conference which submits a nationwide master plan to the Congress.

At that point the courts, the prosecutors, and the public defenders will have done all in their power to achieve speedy trial. They will have agreed to a 4-year plan during which 60-day trials in the average simple Federal prosecution would be phased in. The plan would require a careful study of the causes of delay in that court, the adoption of those innovations which will meet the peculiar needs of the court, and a budget requesting the necessary additional resources. At that point, the onus will be on Congress where ultimately it must reside.

The Congress then has two alternatives, if it truly is committed to enforcing the sixth amendment and insuring justice, it will appropriate those additional resources which are proved to be necessary to achieve the goal set by law in this bill. If the criminal justice system has fulfilled its responsibilities to the statute, to the sixth amendment, and to justice, any failure of Congress to do its part will be evident. Congress would then have to bear the burden of imposing obligations on others, while failing to meet its own.

The advantage of this approach is evident. In the past, each of the parties—the courts, the prosecution, the defense, and the Congress—has been able to avoid the problem of court delay by pointing out the failures, real or imagined, of the others. Judges have not adequately improved procedures in their courts. Rather, they have repeatedly asked for more judicial appointments as the easy solution. Congress, reluctantly, has granted some of these requests, always seeking vainly some solution other than the unending request for more judges. Courts, failing to get all they wish from Congress, point there as a reason for trial delay. This litany of blame is duplicated by charge and countercharge between prosecutors and defense counsel.

The simple answer is that trial delay is not to be laid at one door, but at all. This bill, by imposing responsibilities on all parties, and sanctions on them as well, seeks to break through this fruitless circle of fingerpointing and wasted resources.

Despite the consensus among many experts with regard to the goal of this bill there is hardly unanimity in the criminal justice system on the way to achieve speedy trial. Indeed the approach advocated in this bill is controversial. For example, some reformers, including the Department of Justice, are concerned with the dismissal sanction. Although they concede that delay and plea bargaining have seriously undermined the effectiveness of the criminal justice system, they are unwilling to allow charges to be dismissed in the course of trying to solve these problems.

I am sympathetic with this point of view; however, I believe that the crisis in the courts has so undermined the deterrent value of the criminal sanction that the few releases which might occur as a result of speedy trial dismissals would be a small price to pay for restoring the credibility of the criminal sanction. Of course this assumes that the threat of the dismissal sanction itself will be effective in encouraging reluctant defendants and forcing prosecutors and judges to comply with the time limits. Professor Katz has described very succinctly the purpose of the dismissal sanction.

> Dismissals for failure to comply with the statute will require explanations to the public from judges and prosecutors; if a significant number of dismissals occur, demands for explanation will not be long coming.

In 3 years studying this problem, the dismissal sanction is the only effective mechanism I have discovered by which the legislature can hold the courts accountable for speedy trial without violating the principle of separation of powers. For example, I believe it would be quite improper for Congress to use the appropriations process against a judiciary reluctant to implement speedy trial.

Furthermore, there is disagreement among experts, including some cosponsors, about the flexibility of the time limits contained in this bill. Some would create more exceptions to the time limits and liberalize the continuance provision. Others think the exceptions and continuance provisions are too broad and nullify the strength of the bill. Still others think the phase-in of the time limits are too generous and believe that the courts can meet the 60-day requirement much sooner than 3 years and that the bill should be speeded up accordingly.

Despite these disagreements on detail, all of the cosponsors are in agreement on the general thrust of the bill. And we are unanimous in the conviction that if the legislative branch does not take bold and decisive action in the near future, the criminal justice systems in this country will completely collapse. On the other hand, decisive action does not have to mean precipitous action nor does it re-

quire repression. It will require us to take risks, and freedom always does. The proposal set out in this bill would require the system to take risks. While I do not pretend that the speedy trial scheme is infallible, I am absolutely positive that if we do not reach a consensus on a speedy trial scheme and an agenda for criminal justice reform, State and Federal Government is in grave trouble.

Mr. President, I ask unanimous consent that the bill and a memorandum explaining the difference between this bill and the bill I introduced last session be printed at this point in the RECORD.

There being no objection, the bill and memorandum were ordered to be printed in the RECORD, as follows:

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act be cited as the "Speedy Trial Act of 1973".

TITLE I—SPEEDY TRIALS

SEC. 101. Title 18, United States Code, is amended by adding immediately after chapter 207 a new chapter 208, as follows:

"Chapter 208.—SPEEDY TRIALS

"Sec.
"3161. Time limits and exclusions.
"3162. Sanctions.
"3163. Effective dates.
"3164. Interim limits.
"3165. District plans.
"3166. Definitions.
"3167. Sixth amendment rights.

"§ 3161. Time limits and exclusions

"(a) In any case involving a defendant charged with an offense, the appropriate judicial officer, at the earliest practicable time, shall, after consultation with the counsel for the defendant and the attorney for the Government, set a day certain for trial.

"(b) The trial of a defendant charged with an offense shall be commenced as follows:

"(1)(A) Within sixty days from the date the defendant is arrested or served with a summons, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public) then within sixty days from the date of such filing;

"(B) Notwithstanding the provisions of subclause (A) of this clause, for the first twelve-calendar-month period following the effective date of this chapter as set forth in section 3163 of this chapter, the time limits imposed by such subclause (A) shall be one hundred and eighty days, and for the second such twelve-month period, such time limits shall be one hundred and twenty days.

"(2) If the indictment or information is dismissed upon motion of the defendant for reasons other than those provided in section 3162(a) and thereafter the defendant is charged with the same offense or an offense based on the same conduct or arising from the same criminal episode, within sixty days from the date the defendant is arrested or served with a summons with respect to such charge, except that if the prosecution is initiated by filing an information or indictment prior to arrest or summons (and made public), then within sixty days from the date of such filing; or

"(3) If the defendant is to be tried again following a declaration by the trial judge of a mistrial or following an order of such judge for a new trial, within sixty days from the date the action occasioning the retrial becomes final. If the defendant is to be tried again following an appeal or a collateral attack, within sixty days from the date the action occasioning the retrial becomes final, except that the court retrying the case may extend the period for retrial not to exceed one hundred and eighty days from the date the action occasioning the retrial becomes final if unavailability of witnesses or other factors resulting from passage of time shall make trial within sixty days impractical.

"(c) The following periods of delay shall be excluded in computing the time within which the trial of any such offense must commence:

"(1)(A) Any period of delay resulting from other proceedings concerning the defendant, including but not limited to—

"(i) delay resulting from any examination and hearing on competency;

"(ii) delay resulting from an examination of the defendant pursuant to section 2902 of title 28, United States Code;

"(iii) delay resulting from trials with respect to other charges against the defendant;

"(iv) delay resulting from interlocutory appeals; and

"(v) delay resulting from hearings on pretrial motions.

"(B) With respect to any delay referred to in clause (1)(A) of this subsection, only such court days as are actually consumed in connection with any pretrial motion or other hearing, examination, presentation of an interlocutory appeal, or a trial with respect to another charge shall be excluded, and in no event shall any period of delay which occurs while any of the aforementioned matters under clause (1)(A) are under advisement or are awaiting decision be so excluded.

"(2) Any period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.

"(3)(A) Any period of delay resulting from the absence of unavailability of the defendant.

"(B) For purposes of subclause (A) of this clause, a defendant shall be considered absent when his whereabouts are unknown and, in addition, he is attempting to avoid apprehension of prosecution or his whereabouts cannot be determined by due diligence. For purposes of such subclause, a defendant shall be considered unavailable whenever his whereabouts are known but his presence for trial cannot be obtained by due diligence or he resists being returned for trial.

"(4) Any period of delay resulting from the fact that the defendant is incompetent to stand trial.

"(5) Any period of delay resulting from the treatment of the defendant pursuant to section 2902 of title 28, United States Code.

"(6) If the information or indictment is dismissed upon motion of the attorney for the Government and thereafter a charge is filed against the defendant for the same offense or any offense required to be joined with that offense, any period of delay from the date the charge was dismissed to the date the time limitation would commence to run as to the subsequent charge had there been no previous charge.

"(7) A reasonable period of delay when the defendant is joined for trial with a codefendent as to whom the time for trial has not run and no motion for severance has been granted.

"(8) Any period of delay resulting from a continuance granted by any judge on his own motion or at the request of the defendant or his counsel or at the request of the attorney for the Government, if the judge granted such continuance on the basis of his findings that the ends of justice and the best interest of the public as well as the defendant would be served thereby. No such period of delay resulting from a continuance granted by the court in accordance with this paragraph shall be excludable under this subsection unless the court sets forth, in the record of the case, either orally or in writing, its reasons for finding that the ends of justice and the best interest of the public and the defendant were served by the granting of such continuance.

"(d) If trial did not commence within the time limitation specified in section 3161 because the defendant had entered a plea of guilty or nolo contendere subsequently withdrawn to any or all charges in an indictment or information the defendant shall be deemed arraigned on the information or indictment with respect to all charges therein contained within the meaning of section 3161, on the day the order permitting withdrawal of the plea of guilty becomes final."

"§ 3162. Sanctions

"(a) If a defendant is not brought to trial as required by section 3161, the information or indictment shall be dismissed on motion of the defendant. The defendant shall have the burden of proof of supporting such motion except that the Government shall have the burden of proof of establishing any exclusion of time under subparagraph 3161 (c)(3). Such dismissal shall forever bar prosecution for the offense charged, any offense based on the same conduct or arising from the same criminal episode, and any other offense required to be joined with the offense. Failure of the defendant to move for dismissal prior to trial or entry of a plea of guilty or nolo contendere shall constitute a waiver of the right to dismissal under this section.

"(b) In any case in which counsel for the defendant or the attorney for the government (1) knowingly allows a date certain for trial to be set without disclosing the fact that a necessary witness would be unavailable for trial on such date; (2) files a motion solely for the purpose of delay which he knows is totally frivolous and without merit; (3) makes a statement for the purpose of obtaining a continuance which he knows to be false and which is material to the granting of a continuance; or (4) otherwise willfully fails to proceed to trial on the date set for trial without justification consistent with section 3161 of this chapter, the court may punish any counsel or attorney, as the case may be, as follows:

"(A) in the case of an appointed defense counsel, by reducing the amount of compensation that otherwise would have been paid to such counsel pursuant to section 3006A of this title in an amount not to exceed 25 per centum thereof;

"(B) in the case of a counsel retained in connection with the defense of a defendant, by imposing on such counsel a fine of not to exceed 25 per centum of the compensation to which he is entitled in connection with his defense of such defendant;

"(C) by imposing on any attorney for the Government a fine of not to exceed $250;

"(D) by denying any such counsel or attorney for the Government the right to practice before the court considering such case for a period of not to exceed ninety days; or

"(E) by filing a report with an appropriate disciplinary committee.

The authority to punish provided for by this subsection shall be in addition to any other authority or power available to such court.

"(c) The court shall follow Rule 42 of the Federal Rules of Criminal Procedure in punishing any counsel or attorney for the Government pursuant to this section.

"§ 3163. Effective Dates

"The time limitation in section 3161—

"(1) shall apply to all offenses charged in informations or indictments filed on or after the date of expiration of the twelve-calendar-month period following the date of the enactment of the Speedy Trial Act of 1973; and

"(2) shall commence to run on such date of expiration as to all offenses charged in informations or indictments filed prior to that date.

"§ 3164. Interim limits

"(a) During an interim period commencing ninety days following the date of the enactment of the Speedy Trial Act of 1973 and ending on the date immediately preceding the date on which the time limits provided for under section 3161(b)(1)(A) of this chapter become effective, each district (and the Superior Court for the District of Columbia) shall place into operation an interim plan to assure priority in the trial or other disposition of cases involving—

"(1) detained persons who are being held in detention solely because they are awaiting trial, and

"(2) released persons who are awaiting trial and have been designated by the attorney for the Government as being of high risk.

"(b) During the period such plan is in effect, the trial of any person who falls within subparagraph (a)(1) or (a)(2) of this section shall commence no later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The trial of any person so detained or designated as being of high risk on or before the first day of the interim period shall commence no later than ninety days following the first day of the interim period.

"(c) Failure to commence trial of a detainee as specified in subsection (b), through no fault of the accused or his counsel, or failure to commence trial of a designated release as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated release, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

"§ 3165. District plans

"(a)(1) Prior to the expiration of the twelve calendar month period following the date of the enactment of the Speedy Trial Act of 1973, each United States district court, with the approval of the judicial council of the circuit, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) during the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) of this chapter is in effect. Prior to the expiration of the twenty-four calendar month period following such date of enactment, each such court, with the approval of such council, shall prepare and submit to the Administrative Office of the United States Court a plan for the trial or other disposition of offenses under this chapter (within the jurisdiction of such court) on and after the expiration of the thirty-six calendar month period following the date of the enactment of the Speedy Trial Act of 1973.

"(2) Each such plan shall be formulated after consultation with, and after considering the recommendations of, the Federal Judicial Center, the United States attorney, and attorneys experienced in the defense of criminal cases in the district, including the Federal Public Defender, if any. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The plan shall make special provision for the speedy trial of cases at places of holding court where there is no judge continuously resident. The district court may modify such plan at any time with the approval of the judicial council of the circuit and shall modify the plan when directed by such council. The district court shall notify the Administrative Office of the United States Court of any modification of such plan.

"(b)(1) Prior to the expiration of the twelve calendar month period following the date of the enactment of the Speedy Trial Act of 1973, the chief judge for the Superior Court of the District of Columbia, with the approval of the Joint Committee on Judicial Administration in the District of Columbia, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offenses under this chapter within the jurisdiction of the Superior Court during the period that the one hundred and twenty day trial limitation required by section 3161(b)(1)(B) of this chapter is in effect. Prior to the expiration of the twenty-four calendar month period following such date of enactment, the chief judge of such court, with the approval of such Joint Committee, shall prepare and submit to the Administrative Office of the United States Courts a plan for the trial or other disposition of offense under this chapter, within the jurisdiction of such court, on and after the expiration of the thirty-six calendar month period following the date of the enactment of the Speedy Trail Act of 1973.

"(2) Such plan shall be formulated after consultation with, and after considering the recommendations of, the Joint Committee, the Corporation Counsel, United States attorney, the Public Defender Service and attorney's experienced in the defense of criminal cases in the District of Columbia. Such plan shall include all such recommendations and shall further include a description of the procedural techniques, innovations, systems, and other methods by which the district court has expedited or intends to expedite the trial or other disposition of criminal cases. The chief judge may modify such plan at any time with the approval of the Joint Committee and shall modify the plan when directed by such Committee. The chief judge shall notify the Administrative Office of the United States Courts of any modification of such plan.

"(c) Within fifteen calendar months after the date of the enactment of the Speedy Trial Act of 1973, the Administrative Office of the United States Courts, with the approval of the Judicial Conference, shall submit a report to the Congress detailing the plans submitted to it pursuant to the first sentence of section 3165(a)(1) and 3165(b)(1) of this chapter, including any legislative proposals and appropriations necessary to achieve compliance with the time limitations provided in section 3161. Within twenty-seven calendar months following such date of enactment, the Administrative Office of the United States Courts, with such approval, shall submit such a report to the Congress covering plans submitted to such Office pursuant to the second sentence of secttion 3165(a)(1) and 3165(b)(1) of this chapter.

"(d) For the purpose of carrying out the provisions of this section, there is hereby authorized to be appropriated such sums as Congress may find necessary.

"§ 3166. Definitions

"As used in this chapter—

"(1) the terms 'judge' or 'judicial officer' United States magistrate, Federal district judge, or judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense other than a petty offense (as defined in section 1(3) of this title) or an offense triable by court-martial, military commission, provost court, or other military tribunal which is in violation of any Act of Congress and is triable by any court established by Act of Congress.

"§ 3167. Sixth amendment rights

"No provision of this title shall be interpreted as a bar to any claim of denial of speedy trial as required by amendment VI of the Constitution".

TITLE II—PRETRIAL SERVICES AGENCIES

SEC. 201 Chapter 207 of title 18, United States Code, is amended by striking section 3152 and adding the following new sections:

"§ 3153. Establishment of Pretrial Services Agencies

"The Director of the Administrative Office of the United States Court shall establish, on a demonstration basis, in each of ten judicial districts (other than the District of Columbia) a pretrial services agency authorized to maintain effective supervision and control over, and to provide supportive services to, defendants released under this chapter. The districts in which such agencies are to be established shall be designated by the Chief Justice of the United States after consultation with the Attorney General, on the basis of such considerations as the number of criminal cases prosecuted annually in the district, the percentage of defendants in the district presently detained prior to trial, the incidence of crime charged against persons released pending trial under this chapter, and the availability of community resources to implement the conditions of release which may be imposed under this chapter.

"§ 3153. Organization of Pretrial Services Agencies

"(a) The powers of each pretrial services agency shall be vested in a Board of Trustees which shall consist of seven members. The Board of Trustees shall establish general policy for the agency.

"(b) Members of the Board of Trustees shall be appointed by the chief judge of the United States district court for the district in which such agency is established as follows:

"(1) one member, who shall be a United States district court judge;

"(2) one member, who shall be the United States attorney;

"(3) two members, who shall be members of the local bar active in the defense of criminal cases, and one of whom shall be a Federal public defender, if any;

"(4) one member, who shall be the chief probation officer; and

"(5) two members, who shall be representatives of community organizations.

"(c) The term of office of a member of the Board of Trustees appointed pursuant to clauses (3) (other than a public defender) and (5) of subsection (b) shall be three years. A vacancy in the Board shall be filled in the same manner as the original appointment. Any member appointed pursuant to clause (3) (other than a public defender) or (5) of subsection (b) to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

"(d) After reviewing the recommendations of the judges of the district court to be served by the agency, the Board of Trustees shall appoint a chief pretrial service officer who shall be a member of the bar of that court. Such officer shall receive compensation at a rate to be established by the chief judge of the court, but not in excess of the rate prescribed for GS–16 by section 5332 of title 5, United States Code. The chief pretrial service officer, subject to the general policy established by the Board of Trustees, shall be responsible for the direction and supervision of the agency and may appoint and fix the compensation of such other personnel as may be necessary to staff such

agency, and may appoint such experts and consultants as may be necessary, pursuant to section 3109 of title 5, United States Code. The compensation of such personnel so appointed shall be comparable to levels of compensation established in chapter 53 of title 5, United States Code.

"§ 3154. Functions and Powers of Pretrial Services Agencies

"Each pretrial services agency shall perform such of the following functions as the district court to be served may specify:

"(1) collect, verify, and report promptly to the judicial officer information pertaining to the pretrial release of each person charged with an offense, and recommend appropriate release conditions for each such person;

"(2) review and modify the reports and recommendations specified in paragraph (1) for persons seeking release pursuant to section 3146(e) or section 3147;

"(3) supervise persons released into its custody under this chapter;

"(4) with the approval of the Administrative Office of the United States Courts, operate or contract for the operation of appropriate facilities for, the custody or care of persons released under this chapter including, but not limited to, residential halfway houses, addict and alcoholic treatment centers, and counseling services;

"(5) inform the court of all apparent violations of pretrial release conditions or arrests of persons released to its custody or under its supervision and recommend appropriate modifications of release conditions;

"(6) serve as coordinator for other local agencies which serve or are eligible to serve as custodians under this chapter and advise the court as to the eligibility, availability, and capacity of such agencies;

"(7) assist persons released under this chapter in securing any necessary employment, medical, legal, or social services;

"(8) prepare, in cooperation with the United States marshal and the United States attorney such pretrial detention reports as are required by rule 46(g) of the Federal Rules of Criminal Procedure; and

"(9) perform such other functions as the court, may from time to time, assign.

"§ 3155. Report to Congress

"(a) The Director of the Administrative Office of the United States Courts shall annually report to Congress on the accomplishments of the pretrial services agencies, with particular attention to (1) their effectiveness in reducing crime committed by persons released under this chapter; (2) their effectiveness in reducing the volume and cost of unnecessary pretrial detention; and (3) their effectiveness in improving the operation of this chapter. The Director shall include in his fourth annual report recommendations for any necessary modification of this chapter or expansion to other districts. Such report shall also compare the accomplishments of the pretrial services agencies with monetary bail or any other program generally used in State and Federal courts to guarantee presence at trial.

"(b) On or before the expiration of the seventy-two-month period following the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall file a comprehensive report with the Congress concerning the administration and operation of the Speedy Trial Act of 1973, including his views and recommendations with respect thereto.

"§ 3156. Definitions

"As used in sections 3146 through 3155 of this chapter—

"(1) the term 'judicial officer' means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court for the District of Columbia, and

"(2) the term 'offense' means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable by any court established by Act of Congress."

SEC. 302. The analysis of chapter 207 of title 18, United States Code, is amended by striking out the last item and inserting in lieu thereof the following:

"3152. Establishment of Pretrial Services Agencies.
"3153. Organization of Pretrial Services Agencies.
"3154. Functions and Powers of Pretrial Services Agencies.
"3155. Report to Congress.
"3156. Definitions."

SEC. 303. For the purposes of carrying out the provisions of this title, there is hereby authorized to be appropriated for the fiscal year ending June 30, 1974, the sum of $10,000,000, and for each fiscal year thereafter, such sum as Congress may appropriate.

SEC. 304. Section 604 of title 28, United States Code, is amended by striking paragraphs (9) through (12) of subsection (a) and substituting in lieu thereof:

"(9) Establish pretrial services agencies pursuant to section 3152 of title 18, United States Code;

"(10) Purchase, exchange, transfer, distribute, and assign the custody of lawbooks, equipment, and supplies needed for the maintenance and operation of the courts, the Federal Judicial Center, the offices of the United States magistrates and commissioners, and the offices of pretrial services agencies;

"(11) Audit vouchers and accounts of the courts, the Federal Judicial Center, the pretrial service agencies, and their clerical and administrative personnel;

"(12) Provide accommodations for the courts, the Federal Judicial Center, the pretrial services agencies, and their clerical and administrative personnel;

"(13) Perform such other duties as may be assigned to him by the Supreme Court or the Judicial Conference of the United States."

MEMORANDUM

THE DIFFERENCE BETWEEN S. 895 AND "THE SPEEDY TRIAL ACT OF 1973"

This bill reflects six major changes in S. 895. First, although the basic provision requiring that defendants be tried within 60 days or have their charges dismissed was retained, the 60 day requirement would not become operative until 3 years after enactment. In the meantime, beginning one year after enactment, trials would have to be held within 180 days and, beginning 2 years after enactment, trials would have to be held within 120 days. There was considerable sentiment among witnesses before the Constitutional Rights Subcommittee that it was unrealistic to expect Federal courts to be able to conduct 60 day trials within 3 months of enactment in some criminal cases as provided in S. 895. The approach adopted in this bill was based upon a suggestion by Senator Percy and others that the time limits be phased-in over a number of years.

Second, the bill contains a new section 3164 which would provide that beginning three months after enactment and continuing until the 60 day provision is effective 3 years after enactment, detained defendants be tried within 90 days or be released from pretrial detention until trial. There was consensus among the witnesses who testified on S. 895 that although immediate implementation of 60 day trials was impractical, it would be feasible to provide speedy trials for detained defendants. This change is based in part upon a similar provision adopted by the U.S. Court of Appeals for the Second Circuit.

Third, the Justice Department suggested that section 3162 of S. 895, be amended to authorize sanctions against defense counsel responsible for unwarranted delay. The Department argued that section 3162 effectively sanctioned the government for delay by providing for mandatory dismissal if trials were not commenced within the proscribed time limits and that in all fairness defense attorneys who cause unnecessary delay should be subject to some type of penalty. The provision is based upon language proposed by Senator Thurmond and in many respects is simply a codification of existing law.

Fourth, many witnesses contended that section 3163's categorization of crimes and effective dates based on the Administration's preventive detention bill was artificial and should be eliminated. This bill applies to all offenses except petty offenses. Of course, this section is also subject to the new phase-in of the time limits contained in section 3162.

Fifth, another consequence of eliminating the categories of crimes and effective dates contained in S. 895 is to allow the districts considerably more time to prepare their speedy trial plans. While S. 895 allowed only 3 months to prepare for speedy trials for certain classes of crimes, the proposed bill would provide at least one year to prepare for 180 day trials and three years to prepare for 60 day trials.

Sixth, Section 3163 of S. 895 had provided a blanket exemption from the time limits for certain complex cases such as antitrust cases and organized crime conspiracy cases. The Subcommittee dropped that provision as a result of criticism by several witnesses who suggested that the provision would be abused. However, complicated cases would still be subject to much more lenient time limits because unusual complexity would be the grounds for a continuance under subsection 3161(c)(8). Therefore, under the new provision complicated cases would be exempted from the time limits on a case-by-case basis rather than under a blanket exemption.

IN SUPPORT OF THE "SPEEDY TRIAL ACT OF 1973"

Mr. ROTH. Mr. President, as a citizen, as an attorney, and as a Member of the U.S. Senate, I am pleased to join my distinguished colleague, the senior Senator from North Carolina (Mr. ERVIN) in cosponsoring "The Speedy Trial Act of 1973."

This bill will serve two purposes. First, it will provide a means for incarcerating dangerous felons who, otherwise, could threaten the lives of other citizens. Second, it will provide those who have been accused of criminal conduct, but are innocent of the crime charged, with a swift means of proving their innocence.

As my colleagues are well aware, the sixth amendment to our Nation's Constitution provides, in pertinent part, that:

In all criminal prosecutions, the accused shall enjoy the right to a speedy . . . trial.

As was recognized by the U.S. Supreme Court in the case of Klopfer against North Carolina, the right to a speedy trial "is as fundamental as any of the rights secured by the Sixth Amendment." That historic decision examined the history of the constitutional provision which Senator ERVIN's bill brings into effect.

As outlined by former Chief Justice Earl Warren, justices in 13th century England visited the countryside three times a year. These justices, Sir Edward Coke wrote in part II of his Institutes:

> Have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice.

Coke's Institutes were read in the American Colonies by virtually every student of law. Thus, it is not surprising that when George Mason drafted the first of the colonial Bill of Rights, he set forth a provision couched in Coke's phraseology.

> In all criminal prosecutions, a man hath a right . . . to a speedy trial.

The Virginia Declaration of Rights of 1776 provided:

Today, each of the 50 States guarantees the right to a speedy trial to its citizens. In addition, an overwhelming majority of the States have enacted statutes setting forth the time within which a defendant must be tried following the date he was indicted, arrested, or committed. The legislation introduced today will, for the first time, set forth such time limits within which a criminal defendant must be tried in a Federal court proceeding.

As the author of this bill has stated:

> The Speedy Trial Act is designed to eliminate the long and unnecessary delays between arrests and trials which have been exacting an unduly high price both from individuals accused of crime and from a society deprived of a swift, sure and fair system of criminal justice.

This purpose will be achieved by establishing a firm time limit—60 days—within which, with limited exceptions, a defendant must be tried. In order to conform to the bill's provisions, this 60-day requirement would not become operative until 3 years after enactment. In the meantime, beginning 1 year after enactment, trials would have to be held within 180 days and, beginning 2 years after enactment, trials would have to be held within 120 days. If trial is not commenced within the prescribed time periods, the defendant could have the charge against him dismissed. This, I believe, is a proper way in which to reform our criminal justice system to meet constitutional demands.

Already, the American judiciary has responded to the problems faced by an accused who is denied a prompt trial. Over 2 years ago, the Judicial Council of the Second Circuit Court of Appeals promulgated a series of new speedy trial rules for the Federal courts in the Second Circuit. At the State level, the New York Court of Appeals and the court system of King County, Wash., have established timetables within their own jurisdictions to guarantee the swift disposition of criminal cases in conformance with the constitutional mandate. I believe it is now time for the Congress to act. Senator ERVIN has, through hearings held by his Subcommittee on Constitutional Rights, revealed the need for legislation such as that proposed today. During the last session of Congress, I was pleased to cosponsor S. 895, "The Speedy Trial Act of 1972." Following a careful evaluation of that proposal by leading jurists, a number of modifications to that proposal have been incorporated in the present bill. Among these was a sanction against defense attorneys who cause unreasonable delay.

I support the changes made in the former bill and commend my distinguished colleague (Mr. ERVIN) for his pursuit of excellence in shaping this proposal.

Mr. President, Congress has jurisdiction over the Federal court system. It is the responsibility of this body to assert itself and enact responsible legislation to guarantee both the accused defendant and the public the constitutional right to a speedy trial. To this effect, I urge each of my colleagues to support the measure being offered today: "The Speedy Trial Act of 1973."

SPEEDY TRIAL ACT

Mr. PACKWOOD. Mr. President, I am pleased once again to cosponsor the speedy trial bill introduced by the distinguished senior Senator from North Carolina, Senator ERVIN. This bill has been revised and refined during extensive and valuable hearings and reflects comments from prominent lawyers and judges throughout the country. I believe that this bill is an admirable effort to correct a problem that has plagued this Nation for far too long and that it would make effective and meaningful the sixth amendment to the Constitution, which guarantees all of our citizens the right to a speedy trial.

We are all aware of the many problems facing our correctional systems. In some courtrooms there are staggering case backlogs that often delay trials for months or even years. Many of our prisons are a disgrace, and overcrowding is a major contributor to this state of affairs. Yet statistics indicate that something over half of those in our city and county jails have not even been convicted of a crime—they are there awaiting trial. All of us have heard stories of prisoners held for 2 or more years awaiting trial—a waiting period perhaps longer than the maximum sentence they would have received had they been tried and found guilty. I hate to think of the disruption of lives and the heartaches caused by such gross unfairness, and I fear that such cases most often happen to those who are least able to protect themselves—the poor and the ill-educated.

This bill also includes provisions for establishing a number of experimental pretrial service agencies in Federal district courts to help control and supervise pretrial releases. This badly needed step should help to alleviate the alarming tendency toward recidivism among some persons released pending trial.

Mr. President, I think that it is time for us to quit talking about the problems of our prisons and about reforming our correctional practices. This bill is a major positive piece of legislation, and I hope that the Senate will act upon it with all due speed.

SPEEDY TRIAL

Mr. PERCY. Mr. President, I am very pleased to be a cosponsor of the speedy trial bill, introduced by our distinguished colleague from North Carolina, Mr. ERVIN. As we all know, Senator ERVIN has been a strong advocate of legislation to make the sixth amendment's promise of a speedy trial something more than a hollow ideal. Through his efforts, we are now on our way to guaranteeing a truly speedy trial to everyone accused of a Federal crime. Not only will this protect the rights of the accused, but it will also protect the rights of all members of society since the certain knowledge of a speedy trial will act as a deterrent to crime in many cases.

Though there are many points in this legislation that deserve praise, I would like to briefly comment on two aspects of the bill which I regard as quite significant.

The first is the sliding scale for the definition of "speedy trial." When the Constitutional Rights Subcommittee was holding hearings on S. 895, the predecessor of this legislation, in July of 1971, I was privileged to be invited to testify on the bill. After having contacted many of the most able trial lawyers in Illinois, I came to the conclusion that a guaranteed trial within a 60-day period would be unattainable immediately, but that it was a goal that could and should eventually be attained. During those hearings, I suggested the idea of the sliding time period as a practical method of phasing in the concept of a speedy trial over a period of 3 years. I am glad to see that this concept of a sliding scale has now been adopted in the bill. I think that it makes it a better bill, and one which offers the hope of it being put into effect by all Federal courts. I trust that 3 years after this bill becomes law, the concept of a speedy trial within 60 days after arrest will be a fact of life within our Federal criminal justice system, and that it will serve as an example and as a challenge to our State courts.

The second feature of this bill, too often overlooked, is title II which established pretrial services agencies. Under this title, these pretrial services agencies will be established in 10 districts throughout the country. These agencies will attempt to coordinate the various services available to a defendant while at the same time acting as a valuable resource agency in recommending to a court the type of pretrial release that should be considered for every defendant. These agencies will also serve both the defendant and the community by insuring an ordered decisionmaking process, based on factual and relevant information. Title II will fill a void in the Federal criminal justice process that has for too long been haphazard.

I compliment Senator ERVIN and his staff for the many hours, and indeed, the many years, which they have spent working to perfect this bill. This legislation should be a model for all bills introduced in the Senate. It has been open to comment and suggestion by all Members of the Senate, and through that process, it has become a better bill and one which deserves to be speedily passed by the Congress.

By Mr. ROBERT C. BYRD:

S. 755. A bill to provide 4-year terms for the heads of the executive depart-

ments. Referred to the Committee on Government Operations.

RECONFIRMATION OF CABINET OFFICERS

Mr. ROBERT C. BYRD. Mr. President, I am today introducing legislation which would require reconfirmation by the Senate of the heads of the executive departments every 4 years. My bill also provides that the terms of these officials shall coincide with the term of the President who appoints them, and, if a vacancy should occur during that 4-year term, the new appointee shall be confirmed by the Senate only for the unexpired portion of his predecessor's term.

As defined by section 101, title 5, United States Code, as amended by Public Law 91-375—August 12, 1970, the executive departments are: The Department of State; the Department of the Treasury; the Department of Defense; the Department of Justice; the Department of the Interior; the Department of Agriculture; the Department of Commerce; the Department of Labor; the Department of Health, Education, and Welfare; the Department of Housing and Urban Development; and the Department of Transportation.

Mr. President, the Constitution does not specify the subordinate Government officials by whose agency or counsel the details of the public business are transacted. It recognizes the existence of such official agents and advisers in article II, section II, wherein the President is given the power to:

. . . nominate, and, by and with the advice and consent of the Senate, shall appoint . . . all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law;

The Constitution left the number and the organization of these departments to the Congress. On July 27, 1789, in the first session of Congress, the "department of foreign affairs" was established with "a principal officer therein" to be called the secretary—I Stat. 28 c.4. This act was the commencement of the executive departments under the Constitution. On September 15, 1789, the name of the department was changed to the "department of state". On August 7, 1789, the Congress created the "department of war" with its chief officer to be called the secretary—I Stat. 49, c.7. During the same session the Congress created a "department of treasury" and then enacted "An act to establish the judicial courts of the United States," wherein provision was made for the appointment of an Attorney General. Such was the original basis of the executive organization of the Government. The Secretary of State, the Secretary of War, the Secretary of the Treasury, and the Attorney General were the immediate superior ministerial officers of the President, as well as his constitutional counselors during the whole period of the administration of George Washington as President of the United States.

The Cabinet—of which no mention is made in the Constitution—apparently met for the first time in 1791, when President Washington suggested that in his absence from the Capital, the Vice President and the four department heads should consult together. By 1793, regular meetings had become the rule, and the term "Cabinet" had come into fairly common usage.

The heads of the executive departments in the early development of our Government were, in reality, personal advisers to the President as well as the administrative heads of their departments. Despite this relationship, the Senate held the constitutional confirmation power over them under article II, section II, and, of course, the departments were creations of the Congress and thereby subject to legislative control.

The executive departments of today's Government comprise the major portion of the U.S. Government—both in employment and expenditures. In 1972, there were 1,572,370 full-time permanent civilian employees in the 11 executive departments. These executive departments had an actual budget outlay in 1972, of $206.948 billion out of a total budget outlay of $231.876 billion, or roughly 89 percent of the entire budget outlay of the United States.

The heads of the executive departments serve at the pleasure of the President since they are his appointees. My bill does not affect the power of the President to remove these officers. However, I think the time has come for these officials to be subject to reconfirmation hearings before the Senate if they are reappointed by the President in his second term. Since they are the President's appointments, I believe their terms should coincide with the President's term, and when vacancies occur the new nominee should be confirmed only for the unexpired portion of his predecessor's term, so that the terms of the department heads and the President shall continue to coincide—just as I provided in my amendment to the bill with respect to the Director and the Assistant Director of OMB on last Friday.

These officials control the actual day-to-day functioning of the Federal Government, and, by the control of their departments, they implement the goals of the U.S. Government as expressed in the legislative enactments of the Congress. The President and the Members of Congress are creatures of the people of the United States in the sense that the people are the source of our constitutional authorities and duties. The departments are creatures of the Congress, and it is the Congress that legislatively sets the priorities that the departments should carry out. The departments derive their authority and duties from the Congress, and just as the President of the United States must go to the people of the United States every 4 years for a judgment on his stewardship, and just as we in the Congress must go before the people to be judged on our performance, the heads of the Executive departments should come back before the Senate, if they are reappointed, to have the performance of their duties judged.

Mr. President, I ask unanimous consent that the text of the bill be printed in full at this point in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 755

A bill to provide four-year terms for the heads of the executive departments

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) notwithstanding any other provision of law, the head of any executive department shall serve for a term of four years beginning at noon on January 20 of the year in which the term of the President begins, except that (1) the term of the head of any executive department serving on the date of the enactment of this Act shall begin on such date and shall expire at noon on January 20, 1977, and (2) the head of any such department appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the unexpired portion of such term. Upon the expiration of his term, the head of any executive department shall continue to serve until his successor has been appointed, been confirmed, and has qualified.

(b) Nothing in this Act shall be construed to affect the power of the President to remove the head of any executive department.

(c) For the purpose of this Act, the term "executive department" means any of the executive departments set forth in section 101 of title 5 of the United States Code.

By Mr. TAFT:

S. 756. A bill to amend part I of the Interstate Commerce Act in order to revise the procedures for the abandonment of railroad lines, and for the establishment or revision of rates, fares, and charges for the transportation of property, by common carriers by railroad. Referred to the Committee on Commerce.

S. 757. A bill to amend the Railway Labor Act to promote railway efficiency, to provide increased compensation for railway employees, to decrease the possibility of the disruption of railway transportation, and for other purposes. Referred to the Committee on Labor and Public Welfare.

Mr. TAFT. Mr. President, on March 3, 1971 I introduced S. 1092 and S. 1093. At that time I noted the serious financial situation confronting America's railroads. This financial crisis continues. The Penn Central, the Erie Lackawanna, the Reading, the Jersey Central, the Boston-Maine, and the Lehigh Valley are in bankruptcy. These are only a prelude to other bankruptcies which are sure to follow if we do not come to grips with the fundamental problems which our railroads face today.

This crisis is highlighted by the announcement last week by the trustees of the Penn Central Transportation Co. that they would require at least $600 million in subsidies or partial nationalization may be necessary. This crisis means that we will have to focus immediately on the problems of the railroad industry and launch major reforms.

Net railway operating income for class I railroads declined from $1,542,300,000 in 1955 to $695.5 million in 1971. Even more alarming is the fact that net working capital for these railroads fell from $933,800,000 in 1955 to a deficit of $122,-200,000 as of September 1972.

If the fixed charges are included as a cost item, the railway industries' rate of return on net work in 1971 was only

2.47 percent. This compares to 10.05 percent for public utilities, 10.8 percent for manufacturing, and 19.5 percent for common carrier trucking. In 1971 cash flow fell short of capital expenditures by $393.4 million.

Not surprisingly there has been a lack of sufficient credit, and a deterioration of railway service.

The Boise Cascade Corp. has reported shipments taking as long as 70 days from International Falls, Minn., to Sidney, Ohio, and 100 days from Idaho to New Jersey. One potash shipper reported to the ICC that a shipment from New Mexico to North Carolina took 155 days. With much more of this we will be asked to bring back the Conestoga wagon.

There has been considerable congressional attention given to the short-term problems of the railway industry. These have included emergency strike legislation, passenger service, and proposals to extend loans or Federal credit to the railway industry.

I believe, however, that it is imperative for us to address ourselves to the fundamental long-range problems of the railroad industry.

It is my conclusion that problems of equipment shortages, inadequate capital, inadequate borrowing power, and inadequate earnings are the results rather than the causes of the railway problem. Unfortunately, the railway industry does not appear ever to have established priorities for its return to an efficient, competitive, and self-sustaining posture.

Unquestionably many of the railway industry's problems are of its own making. For years we have been anesthetized into believing that if the railroads could be relieved of their passenger losses, they would become financially sound. It just was not true.

In my judgment the fundamental problems of the railway industry are its required operation of unproductive branch lines, its irrational rate structure and inefficient work practices.

In solving these problems I believe that we should operate on the following premises: that railroads are inefficient in their operation, that operating railway employees should have their pay increased to reflect increases in railway productivity, and that the American people do not want to nationalize the railroads.

In looking at the fundamental problems of this important industry I have concluded that the railroads which are in the greatest financial difficulty are in most cases those which are saddled with the operation of hundreds or thousands of miles of unproductive branch lines. The financial problems of the granger roads, for example, are not unrelated to their vast unproductive or parallel trackage.

The required operation of unproductive branch lines places a drain on equipment and working capital, involves costly maintenance, and results in higher charges to shippers and consumers.

Should we require America's railroads to operate branch lines which hold forth no possibility of ever generating a profit?

On February 10, 1971, the trustees of the property of the Penn Central Transportation Co. filed a preliminary report with the U.S. District Court for the Eastern District of Pennsylvania. That report stated in part as follows:

It is estimated that Penn Central's plant should be reduced by about 40% in terms of route miles. Nearly 20% of present route miles can already be identified as redundant. More lines will become surplus in response to changes in railroad operating methods, pricing, and the requirements of shippers and receivers. The economics of transportation dictate that most of the traffic now moving on light density rail lines should be handled by truck and/or piggyback trailers and containers.

In the June 1970 issue of Trains magazine, Dr. Lewis K. Sillcox was quoted on this problem of unproductive facilities:

The nation's manufacturing facilities run at about 87 percent of capacity, while railways possess 50 percent of underused capacity. Today, 10 percent of the 225,000 mainline railway mileage in service carries 50 percent of the freight ton-miles. At the other extreme, 30 percent carries only 2 percent of the total freight traffic.

On March 30, 1970, the SOO Line petitioned the ICC to abandon a 41.65-mile line, between Veblen and Grenville, S. Dak. In 1968 the branch originated or terminated only 195 cars. Revenues totaled $63,665 but maintenance alone cost $139,657. Continued operation would have required the SOO to spend more than $200,000 per year for rail, tie, and ballast replacement and bridge repair. It took the ICC over 9½ months to authorize the abandonment. Regrettably, many have taken much longer.

The economic impact of unproductive branch lines upon the railroads is dramatically set forth in a letter to my office from Mr. J. R. Brennan, vice president of the Chicago & North Western Railway Co. I include the portion of that letter dealing with branch line abandonments at this point in my testimony:

As your letter suggests, it would indeed be fair to say that unprofitable branch line operations contribute significantly to North Western's problems of inadequate capital and credit. The large number of such lines on the North Western also cause operating problems such as chronic shortages of equipment necessary to serve widespread branch lines for a short peak period of the year but little-needed during the remaining part of the year.

The North Western has an inordinately high percentage of branch and light density lines, as do most midwestern railroads. North Western operates more than 11,000 miles of railroad, and more than 70 percent of this is classified as branch line or light density mileage.

North Western's branch lines are by their nature low-density, high-cost operations. They were constructed seventy to eighty years ago during an era when rail transportation was by far the most practicable means of land transportation of freight in existence. Although they were built using the latest technology available at the time, they are woefully inadequate for modern operation with heavy diesel locomotives and freight cars. Lightweight rail, untreated softwood ties, little or no ballast, and little or no grading were used in construction. Although many of the original ties of necessity have been replaced first with zinc chloride-treated softwood and later with creosoted softwood and some hardwood ties, generally speaking the original material is still in place on most of these lines. As a result, they have very low weight restrictions and maximum permissible speeds of 10 to 20 miles per hour.

When North Western's branch lines were constructed, there was a need for rail service in the rural areas they served. Grain elevators sprouted, and the railroads were used. All this was changed, however, by the development of the internal combustion engine and the construction of a network of all-weather concrete highways throughout the middle west. The motor truck as well as the river barge have become more popular for shorthaul feeder movements of agricultural commodities (principally grain) to develop regional markets. As a result rail carriers such as the North Western have experienced a significant loss of business to developing modes better suited for short haul transportation.

Despite ever-lessening traffic density, North Western still operates a very large amount of branch line mileage. The burden this mileage imposes on the remainder of our system is indicated by the fact that *80% of North Western's annual gross ton miles are generated from only 20% of its system mileage* while the remaining 20% of the tonnage is generated from 80% of the mileage. Recent studies conducted by our management indicate that over *4,300 miles or nearly 40% of the entire North Western system could be abandoned with a maximum loss of only 3.7% of our total freight revenues each year.* In other words, stations on these 4,300 miles of track originate and terminate shipments accounting for *less than 4%* of our annual gross freight revenues.

From our studies we have determined that *it costs the North Western about $4,000 per mile per year to maintain and operate a branch line.* This cost does not include expenses for handling branch line traffic on other lines to final destination or from initial origin, or any expenses for upgrading branch line trackage to something approaching modern standards. Thus, for a branch line 10 miles in length, North Western must generate annual revenues equal to $40,000 plus applicable expenses of maintaining and operating main lines and yards just to break even, with no profit included.

Our studies also show that the identified 4,300 miles of low-density branch lines produce gross revenues of less than $4,000 per mile per year. From detailed studies of about 1,500 of these miles, we have determined that *North Western is losing between $1,000 and $2,000 per mile of track per year from operating these lines. In other words, our company is losing between $4 million and $8 million per year from operating 4,300 miles of branch line trackage.* North Western operates additional lines which generate revenues of $4,000 to $6,000 per mile per year; we have not yet begun to evaluate these lines in terms of economic liability.

In addition to the operating losses experienced, most of North Western's branch lines are approaching the end of their useful lives and will require substantial upgrading in the near future to permit use of modern cars and engines at reasonable speeds and weight limitations. Our studies have revealed that such *upgrading costs between $35,000 and $45,000 per mile of track;* thus, the 10-mile branch line referred to earlier would require an expenditure of $350,000 to $450,000 for upgrading to modern railroad standards. *If the entire 4,300 miles of deficit branch lines are to be upgraded, as they will ultimately have to be if we are not permited to abandon them, the total cost would fall in the range of $140 million to $180 million.*

I previously alluded to car supply problems on branch lines. North Western operates branch lines from Wisconsin and Northern Michigan to Wyoming; this means available cars must be spread over far too much light-density railroad. It would be uneconomical to acquire additional cars which would be used primarily during the three-month harvest season; greater utilization is required in order to carry the debt service on new equipment. I might add that in evaluating our branch

lines we do vary inputs to see what would happen to our expenses if we ran more frequent service on these lines. However, we invariably find that it would be more expensive to operate frequent train service and thus keep equipment moving than it presently costs to operate once or twice a week.

As the foregoing discussion indicates, North Western would save untold millions of dollars if it were permitted to abandon its uneconomical branch lines and thereby eliminate operating losses and future maintenance costs. *Abandonment of these lines would also have a markedly beneficial impact on the remaining system.* The low earnings and capital position of our railroad means that every dollar spent on a branch line, whether it be for operations or maintenance of way, represents a dollar taken from another part of the system with the consequent result that the entire system suffers. In an attempt to minimize this effect, prudent management dictates that costs on these lines be kept at a minimum. *Money which is required to continue operation of low traffic density branch lines can be put to far better use in purchasing equipment and improving other facilities that will maximize our ability to serve the shipping public.*

We are also convinced that the elimination of low-density branch lines would also have a *substantial effect on car supply by eliminating excessive car days spent on these lines as a result of necessarily low speeds and infrequent service.*

The North Western is in the process of attempting to abandon its most uneconomic branch lines; under present law permission must be sought from the Interstate Commerce Commission to abandon such lines piecemeal and this is an extremely time consuming process. We have found that *in cases where the Commission decides to hold a hearing, an average of eighteen months elapse between the date of filing an abandonment application and the date of an administratively final Commission order.* In view of the poor condition of North Western's branch lines and the burden they impose on our Company's financial viability, present procedures for implementing abandonments are wholly inadequate. (Emphasis added)

During the past several years the ICC has somewhat liberalized its abandonment procedures. For the fiscal year ending June 30, 1971, the ICC granted abandonment certificates for 1,286.6 miles. For the year ending June 30, 1972, this total was 3,457.7 miles. I believe that legislation is still necessary, however, if America's railroads are to be able to direct their resources in those areas where the public requires significant levels of service.

Illustrative of the fact that legislation is still needed is the interim report of January 1, 1973 wherein the trustees of the Penn Central reported to the U.S. District Court for the Eastern District of Pennsylvania that:

The Trustees have had on file at the ICC applications to eliminate over 3000 miles of uneconomic lines. Fewer than 800 miles have been approved for abandonment. At the current rate of approvals, reduction of the present Penn Central system to the 15,000-mile maximum upon which the Trustees' reorganization planning has proceeded cannot be attained by 1976.

Their February 1 interim report specifies a possible saving of over $1 billion of loss over 4 years by line abandonment.

We should also provide a mechanism whereby service can be continued for small shippers who are situated on lines now scheduled for abandonmnet, where those shippers are a significant part of the national or regional economies. In other words, we should have a way to continue certain types of uneconomical service without placing a financial drain on the railroads. Certain foreign countries provide governmental assistance for continuing rail service to isolated communities which would otherwise be abandoned. In the United States we have no such procedure.

With respect to unprofitable branch lines, today, we either place a tremendous financial drain on the railroads or else permit abandonment of the line with the resulting hardship to shippers and communities. We have no mechanism for providing public assistance to continue uneconomical rail service.

It is in this context that I am today reintroducing the Modern Railway Transportation Act. This act would give railway management the unilateral right to abandon unproductive branch lines. Under that act, to abandon a line, the railroad would have to give 90 days' notice to the public and to the Secretary of Transportation. Upon receipt of such notice, the Secretary of Transportation could stay the abandonment of that facility with or without a hearing if he determined that the continued operation of that line would be essential to the national economy, the regional economy, or the national defense.

In the event that he would stay an abandonment, the Department of Transportation would be obligated to reimburse the carrier for all out-of-pocket losses incurred in the operation of such line during the period of the stay. The act protects the workers by providing that no employee's employment could be terminated as a result of the abandonment except by attrition.

It is my intention that this provision would supersede the requirement of section 1(18) of the Interstate Commerce Act that:

No carrier by railroad subject to this part shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

It is also my intent that this legislation should in no way affect the service or operation of Amtrak, under the Rail Passenger Service Act of 1970.

The protracted nature of regulatory proceedings in the past justifies the elimination of a hearing as a requirement for the Secretary's action. Hearings have become field days for lawyers and should not be required for the elimination of unproductive branch lines. If it is determined that the continuing operation of these lines is essential to the public, the public should pay for their continued operation.

We cannot expect railroads to have their shippers subsidize inefficient operations and at the same time expect them to provide good service to the public and high wages to their employees.

The second major problem with the railway industry is its rate structure. The ICC was created in large part to prevent arbitrary and discriminatory rates. The record shows that the ICC has sometimes done exactly the opposite. Rates vary not only as to the commodity shipped, but as to the direction in which the freight moves.

A study made for the Toledo-Lucas County Port Authority several years ago illustrated the irrational results of this rate policy. It cost less to ship farm tractors from Springfield, Ill., all the way to New York City for export than it cost to ship them to Toledo, Ohio for export. Road graders made in Indianapolis, Ind., could be shipped to New York for less than they could be shipped to Toledo, Ohio. Excavating machines made in Peoria, Ill., could be shipped to Norfolk, Va., for one-third less than they could be shipped to Toledo, Ohio.

An importer of sugar in Columbus, Ohio, could have it shipped from Norfolk, Va., for less money than from next door in Toledo. A buyer of chrome ore in Calvert, Ky., could have it shipped from New Orleans, La., for about one-third as much as from Toledo, Ohio. Iron ore could be shipped to Ashland, Ky., from Baltimore, Md., for only about half as much as from Toledo.

The Great Lakes task force brought to my attention the following example of rate discrimination as authorized by the ICC: To ship synthetic rubber from Louisville, Ky., to New York for export, 834 miles, the rate in 1970 was 95 cents per hundred weight. But the rate for the same commodity to Toledo, a distance of only 298 miles, was $1.18.

Why it should cost more to ship rubber 298 miles than 834 miles is a secret locked within the bureaucratic tangles of the ICC.

On March 5, 1971, I received a letter from Mr. Herbert O. Whitten, a transportation consultant for the Department of Transportation, and other organizations and agencies. In that letter he described our railroad rates and tariffs as "conflicting, obfiscated, confusing, complex, outdated, and even deceiving." The absurdity of the present rate structure is dramatically illustrated in his letter:

I have estimated that there are in excess of 43 trillion railroad rates on file at the ICC. Stated another way, I estimate that there are over 1.44 septillion railroad rate and revenue division possibilities, this is 1,440,000,000,000,000,000,000,000 or 1.44 x 10^{24} rate and division possibilities. I have personally measured the tariffs on file in the ICC Tariff Room and counted 4300 feet of tariffs—without an index to the rates covered! This is equal to a single stack 7½ to 8 times as tall as the Washington Monument or 3½ times as tall as the Empire State Building with its TV antenna!

Interestingly enough, some 1300 electric utilities, serving the same National economy, manage to produce about twice as much revenues in the same National economy with a rate structure which is entirely contained in a book about 2½ inches thick, published by the Federal Power Commission.

The American railroad rate structure is the work product of bureaucracy at its worst.

Rate hearings are long, protracted and expensive. The results are irrational and the consumer is the one who suffers.

In the "Big John" case, consumer savings on meat, bread, butter, and milk,

were estimated at $30 to $40 million annually under rates proposed by the Southern Railway. It took over 2 years, however, for the Southern to obtain permission to lower its rates and two more before final approval was received.

At a speech before the New York State Bar Association on January 28, 1971, the Honorable Richard McLaren, Assistant Attorney General, Antitrust Division, Department of Justice, made these observations about ICC rate regulations:

Regulation has led to high value-of-service freight rates with little relationship to the lowest cost available in transporting a given commodity. Under ICC ratemaking proceedings, rates generally are allowed to rise to the level of the highest cost carrier in the market. For the most part, only inefficiency is rewarded in this protective atmosphere and in the long run the nation's resources are seriously misallocated.

Shippers, consumers, and carriers all pay the cost of high rates and inefficiency. ICC rate maintenance is estimated to account for 400 million to 1 billion dollars of the nation's annual freight bill. Artificially high rates discourage interstate commerce and—as the recent experiences of the railroads vividly demonstrate—do not lead to increased profits for the carriers. Instead, operating revenues are devoured by higher costs in overcapacity and inefficiency. Some observers of the regulatory scene point out that the railroads would now be in a much better shape if they had been able to price competitively.

He concluded by stating that:

Of one thing I am sure, competition as a regulator has a far better track record than the administrative agencies.

The Modern Railway Transportation Act would divest the ICC of all railroad ratemaking authority. The act would allow each carrier to establish its own rates in the competitive market structure subject to the following limitations:

First, there could be no rate discrimination as to the identity of the shipper, the direction in which the shipment moves, or the value of the cargo.

Second, there could be no rebates made to any shippers, and,

Third, there could be no agreements between carriers with respect to rates or charges.

The act would permit rates to be based upon the weight and cubic volume of the shipment, the need for special equipment or special switching, the distance traveled and whether the cargo was general merchandise or a bulk commodity. Rates could also be lowered for unit train shipments and multiple car shipments.

These rate provisions could be enforced in the U.S. district courts upon complaint of the Secretary of Transportation or any party in interest.

This act is designed to eliminate the discriminatory, cumbersome, complex, arbitrary, and irrational rate structures existing in the railroad industry today. Shippers and consumers would be protected by the antidiscrimination provisions of this act. In short, this bill is intended to protect the public rather than the practitioners before the ICC who seem to be the principal beneficiaries of the existing law.

Let me emphasize that deregulation will help America's consumers. Prof. Thomas Gale Moore, of Michigan State University, undertook a study for the Brookings Institution in which he concluded that America's consumers pay up to $7 billion per year in excess freight rates largely because of overregulation. The measure which I am introducing today can be translated into cheaper cars and cheaper potatoes for the American public.

The railroads are not, however, getting rich by virtue of this rate structure. On the contrary, these rates are necessary to pay for the unproductive branch lines and unproductive work practices which have been tolerated for too long by rail management and our regulatory authorities.

The third fundamental problem in the railway industry is the existence of unproductive work rules.

On February 11, 1971, the trustees of the Penn Central said that 10,000 of the Penn Central's 94,000 employees were retained solely because of arbitrary and archaic work rules. They indicated that these jobs would cost the company $120 million in 1971 and projected a cost increases to $165 million in 1972.

At the present time railroads have to change crews every 100 miles unless interdivisional runs are negotiated for additional compensation. This rule owes its origin to the days of the steam locomotive and is ill suited to the contemporary equipment of America's railroads.

For years, work rules restricted the use of radio communication among railroad employees. Radios were used for communication by airlines, taxicabs, and television repair shops but railroads were not able to have their employees use radio communication without additional pay. It is difficult to see how our Nation's transportation policies were advanced through the use of flags, hand signals, and written messages instead of radios. This subject came to a head during the negotiations which produced the last series of national wage and rules agreements. In return for the elimination of radio allowances, carriers were permitted to use radios effective January 1, 1973, and they were required to increase the basic daily rates of yardmen and roadmen by $1. This new agreement will cost one major midwestern road $500,000 in 1973.

If a crew of one railroad takes freight cars to another railroad for interchange, in many cases it cannot pick up the cars returning to its own line. Instead, another crew from the other railroad must be employed to interchange the remaining cars. These interchange restrictions cost one midwestern road approximately $900,000 in 1972.

Road constructive allowance payments are made to road and yard crews for specific tasks performed during their regular tours of duty in addition to their regular pay. While some cost reductions in the area of road-yard service have been made as a result of the last National Wage and Rules Agreement, road constructive allowance payments for one midwestern road in 1972 totaled over $3,350,000 as compared with $2,400,000 for 1970.

Restrictive work practices do not promote efficient railroad transportation, and are not in the long-range interests of either the employees or the general public.

A bill which I am introducing today to amend the Railway Labor Act would allow work rules to remain a matter for collective bargaining. If, however, an individual carrier wished to amend or abolish a work rule affecting operating employees, without resort to collective bargaining, it could do so upon the following conditions:

First, any cost savings realized as a result of such change would have to be shared equally by the operating employees of that railroad; and second, any reduction in the number of operating employees contemplated by such change would have to be accomplished by attrition.

The bill would not affect work rules which relate principally to employee health or safety. Under this bill railroads would have the flexibility to adopt efficient work practices and at the same time no existing railway employee would lose his job as a result of work rule changes. This legislation would permit railroads to become more efficient and give better service to the American public. At the same time an equal division of cost savings with operating employees would assure increased compensation for the operating employees of America's railroads. This legislation passes the ball to the management of the Nation's railroads. They will be confronted with the hard choice as to whether to remove a given work rule from collective bargaining on the condition that they make payments to the operating employees equal to one-half of the cost savings.

These added payments to operating employees would be made within 4 months after the close of each fiscal year. In the event of a dispute between any railroad and the unions as to the amount of the cost savings, there is provision for the mutual appointment and compensation of independent accountants to make a final and binding determination.

This legislation, for the first time, would give railroad employees a direct financial stake in the efficiency of the carriers. It would prevent management from blaming poor service upon outdated work rules, and protect the jobs of all existing operating employees.

The American economy is dependent upon a sound and efficient rail transportation system. The bills which I am introducing today will give the railway industry the means for its own internal rejuvenation without the necessity for nationalization or major subsidy.

I ask unanimous consent that the texts of these bills which I am introducing today be printed at this point in the RECORD.

There being no objection, the bills were ordered to be printed in the RECORD, as follows:

S. 756

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Modern Railway Transportation Act".

SEC. 2. Part I of the Interstate Commerce Act is amended by striking out section 13a

and inserting in lieu thereof two new sections as follows:

"ABANDONMENT OF LINES

SEC. 13a. (a) Except as provided in subsection (b) and subject to the requirement of subsection (c) of this section, and notwithstanding any other provision of this Act, after ninety days following public notice and notice to the Secretary of Transportation, any carrier by railroad subject to this part may abandon any line of railroad (including any part thereof), notwithstanding the constitution or laws of any State or the order of any State agency or court.

"(b)(1) If the Secretary of Transportation finds, after receiving any notice pursuant to subsection (a), with or without public hearing at the discretion of the Secretary, that the continuance of the line proposed to be abandoned, is essential to the national or any regional economy or to the national defense, he shall prior to ninety days following such notice (A) order the continuance of such line without change, and (B) contract with such carrier to make payments to such carrier in the amount necessary to reimburse the carrier for losses suffered as a result of such continuance ordered by the Secretary. Any such contract may be made for such period or periods, and may be renewed, as the Secretary determines. At any time the Secretary determines that such continuance is no longer essential under the provisions of this subsection he shall terminate such payments, and authorize such abandonment, effective on a date which is at least ninety days after public notice is given of such abandonment."

"(c) No employee's employment with a carrier shall be terminated as a result of an abandonment, authorized in subsection (a), but a carrier may, after any such abandonment, reduce by attrition its total number of employees by an amount equal to the number of employees made unnecessary by such abandonment, discontinuance, or change.

"(d)(1) The Secretary of Transportation shall administer the provisions of this section and shall promulgate such regulations as may be necessary for such administration.

"(2) The district courts of the United States shall have jurisdiction upon complaint of the Secretary of Transportation, or any party in interest, alleging a violation of any provision of this section, to issue such writs of injunction or mandamus as may be necessary to restrain violations of, or compel obedience to, the provisions of this section.

"(e) There are authorized to be appropriated such amounts as may be necessary to make payments contracted for by the Secretary of Transportation pursuant to subsection (b).

"RATES, FARES, AND CHARGES FOR THE TRANSPORTATION OF PROPERTY

"SEC. 13b. (a) Any provision of this Act which is inconsistent with the provisions of this section shall not apply after the effective date of this section to carriers by railroad subject to this part or to rates, fares, charges by, or activities of, any such carrier which are established or carried out pursuant to this section. After such effective date, rates, fares, and charges established pursuant to this section shall be just and reasonable charges for the purposes of this Act.

"(b) Any carrier by railroad subject to this part may establish or revise rates, fares, or charges, and classifications applicable thereto, for the transportation of property, subject to the following requirements:

"(1) No such proposed rate, fare, charge, or classification, or revision thereof, shall be made effective until after thirty days following public notice thereof and notice to the Secretary of Transportation, and all effective rates, fares, charges, and classifications by each carrier shall be maintained in print and open for public inspection.

"(2) No discrimination shall be practiced in such rates, fares, charges, and classifications with respect to the identity of the shipper, the direction of the shipment, the value of the property shipped or for any other reason other than may be expressly authorized by the provisions of this section or other provisions of this Act.

"(3) No rebates shall be made to shippers.

"(4) No agreements shall be made between carriers with respect to rates, fares, charges, or classification.

"(5) Rates, fares, or charges may be varied, or classifications may be made, on the basis of—

"(A) bulk shipments and general merchandise shipments;

"(B) weight;

"(C) cubic volume;

"(D) the need for special equipment to transport the property;

"(E) special switching services necessary to transport the property, or to operate or terminate the shipment;

"(F) distance;

"(G) providing a lower weight to mileage rate for longer than for shorter shipments, for tanks or container on flatcar shipments, for unit train shipments, and for multiple car shipments; and

"(H) an amount actuarily calculated to cover claims for damage and loss of high value shipments.

"(c) Any carrier by railroad, or any officer or other agent thereof, who knowingly violates the provisions of paragraph (2) or (3) of subsection (b) of this section shall upon conviction thereof be punished by a fine of not more than $10,000 for each violation.

"(d)(1) The Secretary of Transportation shall administer the provisions of this section and shall promulgate such regulations as may be necessary for such administration.

"(2) The district courts of the United States shall have jurisdiction upon complaint of the Secretary of Transportation, or any party in interest, alleging a violation of any provision of this section, to issue such writs of injunction or mandamus as may be necessary to restrain violations of, or compel obedience to, the provisions of this section."

SEC. 3. The amendment made by this Act shall be effective after ninety days following the date of enactment of this Act.

SEC. 4. Nothing in this Act is intended to amend the provisions of the Rail Passenger Service Act of 1970.

S. 757

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 10 of the Railway Labor Act (45 U.S.C. 160) is amended by inserting "(a)" immediately after "Sec. 10," and by adding at the end thereof the following new subsection:

"(b)(1) Notwithstanding any other provisions of this Act, whenever any carrier proposes a change in rules affecting operating employees as contained in agreements made in accordance with section 6 of this Act, unless such rules relate principally to the health or safety of employees, the carrier may make such change effective as proposed, if (A) any cost savings realized as a result of such change affecting rules will be shared 50 per centum each by the carrier proposing such a change and the operating employees of such carrier and (B) any reduction in the number of operating employees of such carrier contemplated by the proposed change affecting rules will be accomplished by attrition.

"(2) It shall be unlawful for any carrier to lock out any of its employees or any class or craft of its employees or in any manner to terminate its transportation service in consequence of any dispute subject to the provisions of this subsection.

"(3) It shall be unlawful for the employees of any carrier to strike or engage in any other work slowdown in consequence of any dispute subject to the provisions of this subsection.

"(4) Nothing in this subsection shall be construed to prevent carriers and representatives of the employees from entering into an agreement affecting work rules.

"(5) For the purposes of clause (A) of paragraph (1) of this subsection, the term 'operating employees' shall be defined to include all engineers, firemen, hostelers, outside hosteler helpers, conductors, trainmen, and yard service employees.

"(6) For the purposes of clause (A) of paragraph (1) of this subsection, payments to operating employees shall be on a per capita basis and shall be made not later than four months following the end of the fiscal year. In the event that any employee was not employed by a carrier for the entire fiscal year preceding the payment date, the payment to such employee hereunder shall be prorated to cover the period of employment.

"(7) In the event that any representative of affected employees contests the amount of cost savings as determined by the carrier under clause (A) of paragraph (1) of this subsection, said representative and the carrier shall mutually designate and compensate a certified public accountant, whether an individual, partnership, or corporation, which account shall make a determination of the cost savings, which determination shall thereupon be final and binding."

(b) The heading of section 10 of such Act is amended to read as follows:

"UNRESOLVED DISPUTES"

SEC. 2 (a) Section 201 of the Railway Labor Act is amended by inserting "section 10(b)" after "section 3".

(b) Section 202 of such Act is amended by inserting "section 10(b)" after "section 3".

SEC. 3. Nothing in this Act shall be construed to prevent the right of any employee to resign from his position of employment.

SEC. 4. This Act shall take effect upon its enactment and shall apply to any proposed change in agreements affecting rules regardless of when any such proposal was initiated.

Mr. TAFT. Mr. President, I ask unanimous consent that the interim report of February 1, 1973, submitted by the trustees of the Penn Central Transportation Co. to the U.S. District Court for the Eastern District of Pennsylvania, be printed at this point in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

TRUSTEES INTERIM REPORT OF FEBRUARY 1, 1973

(In the United States District Court for the Eastern District of Pennsylvania)

In their Report of January 1, 1973, the Trustees reached the conclusion "that without government financial assistance for improvement of the railroad, a reorganization of Penn Central cannot be achieved in 1976, as they had considered possible."

The Trustees also said that "the extent of assistance needed, as well as the forms of assistance which the Trustees will recommend, will be the subject of further advice to the Court, and the Government, within a matter of weeks."

The further advice so anticipated is set forth in this Report.

The Trustees wish to emphasize at this point that if shippers, communities, organized labor, and federal, state and local governments affected had previously been prepared, or were now prepared, to permit Penn Central to shrink the system to the size which is most economically justified (the 11,000 mile core railroad described in the Trustees' Interim Report of October 1, 1972),

to pay only the employees needed therefor and to furnish only fully compensated passenger service, Penn Central would have a good prospect of viability without any other government financial assistance. In such event, the Trustees believe there would be a basis for enough investor confidence that the necessary funds described herein for improvement of the railroad's service could be raised from operations and from private sources without unacceptable erosion or dilution of the claims of Penn Central prebankruptcy claimants.

One way of measuring the public burden that Penn Central carries is to compare the results of operation of the present 20,000 mile railroad (with gradual abandonments down to 15,000 miles) with the results of operation of an immediate 11,000 mile railroad as outlined in the Trustees' Interim Report of October 1, 1972 and summarized in Appendix A hereto. The projected differences, as shown in the table below, are extraordinary.

PROJECTED NET RAILWAY OPERATING INCOME

[In millions]

	Immediate 11,000-mile railroad	Present railroad	Difference
1973	$59.0	$157.2	$216.2
1974	137.6	104.8	242.4
1975	225.1	56.5	281.6
1976	299.2	1.1	300.3
Total through 1976			1,040.5

The Trustees would emphasize that they operate a 20,000 mile rather than the optimum 11,000 mile railroad solely because public authorities are reluctant to permit a reduction in surplus plant, and because labor would expect large labor protection payments, amounting to $774.1 million through 1976 alone, if Penn Central were free promptly to move to a railroad of 11,000 miles.

Strong arguments can and will be made that immediate action to relieve Penn Central of the foregoing excessive service and labor obligations is the best course to follow. The government financial assistance described herein, to any extent and in any form, must be regarded as an alternative—the price of the present inability of Penn Central and other non-viable railroads to withdraw from public service that produces only losses, to dispense with surplus employees, and to confine themselves to those operations where, in serving the public, profits can be developed as the result of superior service.

I.—ESSENTIAL EXPENDITURES

In prior reports the Trustees have pointed to the improvements in Penn Central's freight service that have come since bankruptcy. Car supply has been more nearly adequate because of better utilization of equipment and the acquisition of new cars. Many more trains have been added. There has been a closer adherence to schedules in the operation of fast freight trains. Control of freight loss and damage, while far from satisfactory, has been better. Instead of being deluged with complaints, the new management has received much favorable comment from customers.

In 1972, yearly carloadings turned up over those of the preceding year for the first time since 1964.

But despite this notable progress, the quality of Penn Central service falls short of the standards required in today's competitive transportation market. The availability of faster and more reliable highway carriage puts in serious question the present-day ability of Penn Central to establish the upward trend in its business volume so necessary to future earning power. Only by catching up on maintenance and capital improvements neglected in the past fifteen years can Penn Central be put in a position to provide the high quality of service demanded by an ever-increasing portion of the Nation's shippers. The estimated cost of doing this work over a period of years is:

$435 million for additional maintenance of way charges spread over the period 1973–1976, with the understanding that $200 million more may be necessary after 1976 (see Appendix B);

$45 million for additional maintenance of equipment to insure, by 1976, a bad-order freight-car ratio of not more than 5%;

$120 million for additional capital expenditures directly related to service improvements and traffic development (see Appendix B).

$600 million to $800 million—Total.

These sums are the Trustees' best present estimate of what is necessary to permit attainment of a steady increase in traffic volume, as projected in the Trustees' earlier reports. Viability assumes, as before, prompt relief in the other areas which the Trustees have indicated as critical to successful reorganization: elimination of surplus plant and of unnecessary employees (on an attrition basis) and full compensation for all passenger operations.

The Trustees' conclusions as to the extent of the job to be done are essentially a confirmation of the requirements for maintenance stabilization and normalized maintenance projected in the Trustees' Interim Report of October 1, 1972, with some additions resulting from subsequent investigations. The urgency of making such additional expenditures, in the light of changing traffic patterns and Penn Central's inability to make such expenditures without government assistance, is explained below.

In relating these expenditures to Penn Central"s viability, it is important to understand the changes that are taking place in transportation, particularly in the Northeast region. For a time after bankruptcy, it proved possible to make substantial improvements in the reliability of freight rail service even in the face of a deteriorating condition of the plant simply by better organization and better management. Not until Penn Central, under present management, recently commenced a dynamic program for increased piggyback traffic and other high-quality freight traffic did it become evident that the railroad in its present state is simply unable to handle the strain of such service. The foregoing, together with additional recent evidence of acceleration in deterioration of the plant, has led the Trustees to the conclusion that continued acceptable public service requires much more additional maintenance and additional investment in the rail plant.

In years gone by, the principal commodities handled in Penn Central's freight service were bituminous coal and traffic related to the steel industry—ore, coke, fluxing stone, and iron and steel. But these commodities have been declining faster than other traffic. Already many million tons of high-sulphur steam coal have been lost. Comparing tons handled in 1968 (the merger year) and 1972, the figures show:

	Coal, coke, ore, fluxing stone, iron and steel (tons handled)	All others (tons handled)
1968	166,009,906	131,348,680
1972 (estimate)	144,350,000	126,050,000
Rate of decline (percent)	13	4

Even more striking is the downward revision in the traffic forecasts for these commodities as made by Temple, Barker, and Sloane. As included in the Trustees' Plan for Reorganization dated April 1, 1972, that firm estimated 621.9 million tons of bituminous coal and steel related commodities for the period 1973–1976. Six months later, for inclusion in the Trustees' Interim Report of October 1, 1972, that estimate was lowered to 579.3 million tons—a reduction of 42.6 million tons, equivalent to some $172 million in revenue.

Certain of the influences bearing on the movement of coal and steel-related commodities, such as the problems of high-sulphur coal and the developing patterns of the steel industry in the East, are completely beyond the control of Penn Central. The Trustees cannot count on these commodities to contribute importantly to volume increases projected earlier in their reorganization planning. On the contrary, such increases, for the most part, must come from other traffic, including high-grade manufactured and miscellaneous commodities which will tend to move over the best-service routes, whether highway or rail. As explained in a recent staff report for the use of the Senate Commerce Committee:

"Looking to the future, there is a good reason to believe that the fate of the railroads will in large measure be determined by the extent to which the industry can gain a greater share of the manufactured goods market. If the railroads are to improve their financial posture and keep up with the rapidly changing character of the economy, more aggressive initiatives aimed at those kinds of markets are called for. Should the industry continue to depend so heavily on the lower valued bulk commodities, it runs the risk of confining itself to traffic that not only yields comparatively little in terms of revenue, but, as noted earlier, possesses less potential for traffic growth. In contrast, manufactured goods offer the railroads the twin prospects of greater returns and growing markets.

"Can the industry move more of this kind of traffic? The answer ultimately reduces to the matter of rail-motor carrier competition since almost all truck traffic is concentrated in the high yield sectors. . . .(T)he railroads now move less than 30 per cent by weight of manufactured goods traffic, while the trucks enjoy about two-thirds of this market. What is particularly striking, however, is that contrary to popular impression, about a third of all truck shipments move 500 miles or more, a distance on which for most shipments (with weight and cube considered) comparative costs should make rail movement superior. The example of how the railroads regained from trucks a significant share of the automobile market stands as evidence that high-rated traffic can be held by or attracted to the railroads. The fact, however, is that for most manufactured goods the rail share of longer-haul shipments is decidedly below the apparent potential." [1]

"As has been true for many years and as is likely to be the case for many years to come, the railroads are heavily oriented to the transportation of bulk commodities. On this traffic yields are relatively low (though not necessarily unprofitable, at least in the sense of coverage of marginal costs) and the rate of growth is likely to continue to be generally slow. If the railroads are to expand and increase their share of intercity transportation they must exploit the potential

[1] *The American Railroads: Posture, Problems, and Prospects*, Staff Analysis for the U.S. Senate Committee, Prepared at the Direction of Hon. Warren G. Magnuson, Chairman, for the Use of Committee on Commerce, United States Senate, August 28, 1972, at page 67.

that lies in the movement of manufactured goods, notably including shipments by TOFC—trailer on flat car—and container. The economies of the situation make this feasible for many types of movements, taking into account the character of the product, costs, weight, and shipment distance. If, though, the potential is to be converted into reality it will require better service (meaning improved utilization of equipment, notably freight cars), faster turnarounds, reduced terminal and handling times, and a highly flexible marketing approach that more closely relates rates and service to competitive modes of transportation. Among other things this demands a complementary public policy, one that is conductive to innovation." [2]

Obviously, to compete in this changing transportation market with its heavy demand for service of high quality, a railroad with slow tracks and inadequate freight cars can hardly be successful. On certain important parts of its system, Penn Central is such a railroad. At one time this was a railroad with high-speed tracks with many more serviceable freight cars. But over the years freight operating schedules have been lengthened in many areas, and "slow orders" because of track condition have brought further increases in running times. In Appendix B are set forth the new rail, ties, ballast, and surfacing required to put the track structure in more satisfactory operating condition.

Moreover, on the equipment side Penn Central's needs are substantial. Cash shortage has forced curtailment of freight car repair so that the ratio of bad-order equipment to the whole fleet will reach 11 percent by the end of 1973, whereas the ratio should be no more than 5 percent. Penn Central management estimates that to reverse the deterioration of the existing Penn Central equipment fleet and to bring the bad-order ratio back to 5 percent would involve increases in repair expenditures, over those presently budgeted because of cash limitation, of approximately $45 million during the period 1973–1976. Improving the condition of Penn Central's equipment fleet is just as necessary as the greater track maintenance described above in giving Penn Central the capability of providing high-quality transportation service.

New equipment is also required to serve the same purpose. In the face of Penn Central's decreasing ability to depend on use of rolling stock received in interchange and owned by other railroads and the unacceptability of such continued dependence in the face of a nationwide freight-car shortage, the Trustees estimate that, to carry the increasing traffic projected by Temple, Barker & Sloane for 1976, the railroad will need about 18,000 new freight cars and 609 locomotives, costing about $569.3 million. While provision has been made for these acquisitions in Penn Central planning, Penn Central's cash shortage and lack of credit under present conditions make the financing of such equipment most difficult and exceedingly expensive.

The terms of the Trustees' sale of the Pennsylvania Company, if approved by the Court, will provide a line of credit for rolling stock acquisitions of up to $150 million on relatively favorable terms. Accordingly, the line of credit gained as part of the consideration from the sale of Pennsylvania Company will solve part, but not all, of the problem of financing new equipment. In view of the present and anticipated shortage of cash and credit, additional government guaranteed equipment financing is necessary.

[2] *Id.* at page 69.

The Trustees reaffirm their support for the enactment by the present Congress of legislation comparable to H.R. 16281 as considered last year.

Finally, there is a pressing need for capital projects which are also designed to realize the benefits of the stepped-up maintenance program and to permit Penn Central to serve the additional traffic it needs to attract if it is to survive. The program which Penn Central believes to be essential to its future viability is included in Appendix B. Normally, such expenditures are made from earnings. In the case of Penn Central, present operations do not generate sufficient cash to fund these expenditures. Therefore, unless cash is available from outside sources, the entire capital program (except for critical safety projects) will be frustrated; and Penn Central will be able to do no more than in the years since bankruptcy when, despite plans to spend as much as $75 million in one year, it has had to limit capital outlays to $18–20 million per year, principally for safety projects. The capital projects are necessary if Penn Central is to be capable of offering improved service and attracting increased traffic aggregate $229.2 million by 1976. Of this amount, $109.2 million is provided for in current management planning; for the remaining $120 million, a new source of funds must be found. These are the projects which, if carried out, will improve Penn Central's ability to provide better service for increasing traffic volumes.

The Trustees regard the foregoing program of stepped-up maintenance, both road and equipment, and increased capital expenditures as vital to Penn Central's reorganization. The increased volume upon which earnings depend will not be attracted unless Penn Central can further upgrade its service. This upgrading depends, in turn, upon an improved railroad plant and more serviceable equipment. In fact, if the Trustees were successful in the complete realization of all other conditions which they have postulated for successful reorganization of a 15,000-mile system—fully compensatory passenger service, and smaller crew consist—but failed to achieve an increasing business volume, there would be no earnings and Penn Central could not be reorganized in the private sector. Appendix C sets forth the figures to support this conclusion. The projected cumulative difference in net railway operating income is nearly $700 million.

The public benefits, both economic and environmental, of maintaining rail service are not to be underestimated. Continued rail service as an effective and economic alternative to other modes of transportation should hold down transportation costs for the benefit of shippers and the public. Effective rail freight transportation will hold down future highway congestion and pollution to the benefit of all.

In sum, Penn Central to be reorganized must have other sources of funds resulting either from complete relief from excessive service and labor obligations or at least in part from infusion of governmental funds. Otherwise, the standard of service Penn Central must have to compete effectively will not be attained and the increasing traffic levels upon which reorganization depends will not be produced. Moreover, for lack of cash and credit, Penn Central's rail plant and equipment are deteriorating in condition and thus in value at the same time that unpaid real estate taxes and other high-priority obligations are relentlessly piling up.

Because of claims already accrued, neither the non-rail assets of the estate nor further borrowings can be looked to for the cash needs of the railroad. Indeed, with the railroad lacking funds to make it viable, with plant and equipment deteriorating, with tax claims and other post-bankruptcy claims eroding the estate available for pre-bankruptcy claimants, and with unacceptably slow progress in the direction of previously reported conditions for viability, it would be a violation of the constitutional rights of Penn Central claimants to continue Penn Central rail service much longer under the status quo.

Pending adequate governmental action or the alternative cessation of operations, the Trustees will do all within their power to minimize the need for government assistance. Accordingly they must and will insist upon prompt progress toward a satisfactory solution to the crew consist issue and will shortly propose to the Court suspension of freight service on uneconomic lines and suspension of passenger service where support by public authorities is non-existent or inadequate.

II.—FORMS OF GOVERNMENT ASSISTANCE

The foregoing program could be carried out in a number of different forms which have quite different consequences as to continuing government involvement and responsibility, as described in the Trustees' Interim Report of October 1, 1972. Major alternatives which appear to the Trustees to be worthy of the most serious discussion are set forth below.

(a) *Subsidies until the railroad can become viable*

The form of governmental assistance which would hopefully result in the minimum government involvement and responsibility would be a $600 to $800 million program of subsidies over a period of years for the purposes described in Part I. The justification for a subsidy is that the amount required is, after all, substantially less than the burdens imposed on Penn Central by excess service and labor obligations (see page 1).

Of course, for its protection, the government should have a voice in controlling the uses to which the subsidy payments are put. If the large part of the program that involves increased roadway maintenance were to be provided by the government, it would appropriately be provided subject to requirements that the railroad continue at least the present level of roadway maintenance with internally financed funds. So as not to support wastefully duplicative facilities in the Northeastern railroad system, but without undertaking the burden of deciding once and for all what would be the ultimate shape of the Northeastern railroad system, the government might require a finding by the disbursing authority that the additional roadway maintenance funds and capital improvement funds will not be spent on facilities duplicative of clearly preferable facilities provided by other railroads. There might also be, as to the capital improvement projects, more definitive required approvals by the disbursing authority.

Such a public subsidy contribution, subject to requirements that the funds be spent for purposes providing direct benefits to the public, presents a minimum, and hopefully a temporary, government involvement and responsibility. Alternative forms of carrying out the program may provide the government and the public with greater control, but may present the correlative disadvantages of involving the government with greater responsibility, longer-term commitment and greater government expenditure.

(b) *Joint venture involving conveyance of rail plant to public authority, government commitment to maintain and to improve*

plant, and proportionate sharing of user charges paid by private operating company

If, in providing the subsidy described in the foregoing section, more protection for the government is deemed necessary, a joint venture might be considered. Penn Central would convey the essential roadway to a public or quasi-public authority, and the government would make a commitment to maintain and to improve the plant. The railroad, which would remain as a private operating company, would pay user charges to the authority owning the plant in accordance with a formula related to its volume of activity and its ability to pay. Similarly, Amtrak and local commutation authorities would also compensate the authority on a user basis. The user charges would be divided among the owners of the authority (the government and the Penn Central claimants who contributed the existing plant) in proportion to the value of their respective contributions. The joint venture could contain provisions for termination and for repayment of the government contribution if railroad earnings so permitted.

(c) *Government purchase or lease of right of way at fair market value with subsequent Government maintenance and investment, and with operation by private company paying user charges*

Another alternative is government acquisition of the right of way, the trains to be operated by a private contract operator. Again, the private operating company would pay user charges. Acquisition could be through either an outright purchase or a long-term lease to insure continuity of the roadway as protection for the government's involvement. This solution is particularly appropriate in the passenger-oriented Northeastern corridor where long-range government plans may require massive capital investment.

This alternative would relieve the railroad of any obligation to maintain and to improve the right of way. In addition, local property taxes, which are a present burden on the rail system, could be eliminated or greatly reduced.

Such a solution would provide not only continued service to the public, but also compensation to claimants against the Penn Central estate. This would make it very expensive, for government expenditures would not end with compensation of the private interests involved, but would extend to the maintenance of the right of way and its improvement as set forth in Appendix B, subject to recovery in whole or in part through user charges.

This alternative also could contain provisions whereby the government would divest itself of involvement by selling its leasehold or ownership interest to the private sector if the system developed sufficient earnings.

III.—CONCLUSIONS

It is clear that the status quo will not permit an income-based reorganization. Indeed, because of the accumulation of losses and unpaid priority charges, a continuation of present operations would do violence to the constitutional prohibition against the using of private property for a public purpose without adequate compensation.

The money required to continue service simply cannot be found from private sources, at least in the next few years, unless Penn Central should be immediately relieved of all excessive service and labor obligations.

The alternatives, therefore, may be simply stated. A substantial public investment in Penn Central's plant will insure continuation of essential operations with adequate and efficient service to the public. A failure to make this investment or to take other adequate actions can only result in a closing of Penn Central's railroad.

The Trustees believe that the plant and equipment investment program described in this Report will result in a viable railroad which can remain in the private sector. It will certainly produce a service which the public interest requires.

Decision as to how the investment is made rests, of course, with the legislative and executive branches of the government. The Trustees do not consider themselves competent to advise as to the political preferences or the political practicality of the various alternatives suggested. They do feel that private management with the profit incentive of private ownership would be best; private management under an incentive contract with ownership of the right of way and track and structures by a mixed public and private authority or a public authority is next best.

Because government ownership *and* operation is a very poor, and unnecessary choice, it is not discussed in this report. World-wide as well as domestic experience in addition to logic dictates this strong conclusion.

The Trustees see their responsibility in this area to be to state these facts along with the amount of government funds necessary to make Penn Central a strong public-service organization. The political process must churn out by which method the infusion is to take place. The choice is up to those who control the national purse strings.

For them it is obviously a very hard choice. Frustration with situations such as the Penn Central presents—present and past—may well lead the government to close its eyes to the vital fact that purchase and operation by the government will cost much more over time than an investment of less money in making possible a viable private "public service" enterprise.

Respectfully submitted,

GEORGE P. BAKER, RICHARD C. BOND and JERVIS LANGDON, Jr.,
Trustees of the property of Penn Central Transportation Co., debtor.

APPENDIX A

COMPARISON PROJECTED INCOME 1973–76, PRESENT "20,000" MILE SYSTEM VERSUS 11,000 MILE SYSTEM (FREIGHT ONLY)

[Per base plan study as revised; "Instant"-VPS II October 1, 1972 report]

[In millions of dollars]

	1973	1974	1975	1976	Total 1973–76 cumulative
A. Present system:					
Operating revenues:					
Freight	1,726.2	1,874.1	2,002.6	2,141.1	7,744.0
All other	244.6	252.3	260.4	268.9	1,026.2
(1) Total	1,970.8	2,126.4	2,263.0	2,410.0	8,770.2
(2) Operating costs [1]	2,128.0	2,231.2	2,319.5	2,411.1	9,089.8
(3) Net railway operating income	(157.2)	(104.8)	(56.5)	(1.1)	(319.6)
B. 11,000 mile system:					
(1) Railway operating revenue	1,618.5	1,740.2	1,862.5	1,971.1	7,192.3
(2) Operating costs [2]	1,559.5	1,602.6	1,637.4	1,671.9	6,471.4
(3) Net railway operating income	59.0	137.6	225.1	299.2	720.9
C. Comparison projected: Net railway operating income (11,000 mile system—present (line B (3)—line A 3)	+216.2	+242.4	+281.6	+300.3	+1,040.5

[1] Adjusted to include maintenance stabilization program and normalized maintenance increment.
[2] Excludes labor protection costs; adjusted to include maintenance stabilization, normalized maintenance increment; accrued railway taxes and net rents.

Note: Figures in parenthesis represent loss.

APPENDIX B

MAINTENANCE OF WAY

[In millions of dollars]

Category	1973	1974	1975	1976	Total 1973–76
Ties [1]	38.8	57.9	60.8	63.8	221.3
Welded rail (new) [1]	32.7	41.9	44.0	46.2	164.8
Welded rail (relay) [1]	8.8	11.6	12.2	12.8	45.4
Track surfacing [1]	10.3	10.8	11.3	11.9	44.3
All other maintenance of way	185.3	209.3	215.0	220.3	829.9
Maintenance machinery and equipment	22.0	16.1	3.0	3.2	44.3
Total	297.9	347.6	346.3	358.2	1,350.0
Included in base plan	205.1	225.4	236.3	248.2	915.0
Additional required	92.8	122.2	110.0	110.0	435.0
Capital projects for service improvement and traffic development:					
Service improvemet [2]	29.7	48.3	55.0	52.8	185.8
Traffic development [3]	8.1	14.8	10.2	10.3	43.4
Total	37.8	63.1	65.2	63.1	229.2
Included in base plan	15.0	31.6	30.7	31.9	109.2
Additional required	22.8	31.5	34.5	31.2	120.0

[1] Total base plan and additional requirement includes, for 1973, 2,800,000 ties; 819 track miles of new and relay welded rail and 6,190 miles of track surfaced. The averages for years 1974, 1975, and 1976 are 3,900,000 ties; 1,030 track miles of new and relay welded rail, and 6,190 miles of track surfaced.

[2] Items essential for improving the quality, reliability of service and maintaining safety of operation, such as, terminal improvement, centralized traffic control, hot box detectors, etc.
[3] Items necessary for holding existing and attracting new traffic required for Penn Central's reorganization, such as, new or modified Trailvan Terminals, Flexiflo Terminals, etc.

APPENDIX C

15,000 MILE SYSTEM (FREIGHT ONLY), PROJECTED INCOME ACCOUNT COMPARISON WITH TBS (SEPTEMBER 15, 1972) FORECAST TRAFFIC LEVELS VERSUS "CONSTANT" 1971 TRAFFIC LEVELS, 1973–76

[In millions of dollars]

Account No.	1973		1974		1975		1976	
	TBS	Constant	TBS	Constant	TBS	Constant	TBS	Constant
(501) Railway operating revenue	1,808.5	1,654.3	1,946.0	1,730.4	2,084.7	1,803.1	2,208.9	1,861.6
(531) Railway opeating expenses [1]	1,501.5	1,479.6	1,532.6	1,495.7	1,558.0	1,505.8	1,583.0	1,515.6
Net revenue from railway operations	307.0	174.7	413.4	234.7	526.7	297.3	625.9	346.0
(532) Railway tax accruals [1]	115.2	116.9	116.8	118.5	117.9	119.6	123.5	125.2
Railway operating income	191.8	57.8	296.6	116.2	408.8	177.7	502.4	220.8
Net rents	243.4	224.2	262.8	235.4	278.0	241.5	290.0	244.0
Net railway operating income	(51.6)	(166.4)	33.8	(119.2)	130.8	(63.8)	212.4	(23.2)
Net difference (TBS—constant):								
Yearly	+114.8		+153.0		+149.6		+235.6	
Cumulative	+114.8		+267.8		+462.4		+698.0	

[1] Including labor protection and maintenance stabilization costs.

Note: Figures in parenthesis represent deficit.

By Mr. BEALL:

S. 758. A bill to improve and strengthen the role of Congress with respect to budget control and oversight matters. Referred to the Committee on Government Operations.

CONGRESSIONAL BUDGET CONTROL AND OVERSIGHT IMPROVEMENT ACT

Mr. BEALL. Mr. President, I introduce today the Congressional Budget Control and Oversight Improvement Act. This bill is designed to strengthen and improve the role of Congress with respect to budget control and our legislative oversight responsibilities.

Specifically, the bill proposes the Congress do the following:

First. Move the Federal fiscal year to coincide with the calendar year.

Second. Establish an appropriations ceiling and a workable mechanism to force Congress to live within that ceiling and to make those necessary hard choices in determining priorities.

Third. Strengthen the congressional oversight functions to make certain that all Federal programs are reviewed and evaluated at least every 5 years.

Fourth. Require that each bill introduced and each bill reported to the floor include an estimate of the average costs for each taxpaying family.

Five. Create a Federal program evaluation digest.

Mr. President, last year during consideration of the public debt limitation extension bill, the Congress engaged in an important, and for me, an encouraging, debate. The debate was triggered by the President's request for a $250 billion expenditure ceiling and for blanket authority to reduce programs in order to keep Federal spending beneath the ceiling level.

The Congress, in my judgment, wisely refused to grant the President such authority for this would have meant that the executive branch, and not the elected representatives, would determine Federal spending and program priorities. Notwithstanding my deep respect and admiration for the President and the fact that he is from my political party, I did not and could not support such a request.

The power of the purse is probably the most important power of Congress. This power includes not only the raising of revenue but also the determining of how such funds will be spent. I cannot, as one who believes in the Congress as a coequal branch of the Government, give the President a blank check to do the Congress business.

As a result of that debate, the Congress created a House-Senate committee to study the budget process. This Joint Committee on Budget Control is now examining ways to improve our budgetary process and is scheduled to make a preliminary report to the Congress on February 15. Last year's debate, and the work of the joint committee, may prove from the standpoint of the country and the Congress to be of historic significance. Of course, the true test will not be whether we recognize and debate the problem, but whether we find the ways and means and have the will to take the required action to control the budget and determine the Nation's priorities. It is with this in mind that we have prepared these proposals and I will now proceed to discuss them in greater detail.

CALENDAR YEAR

First, the legislation would change the Federal fiscal year, which ends June 30, to coincide with the calendar year. The champion of this idea is Senator MAGNUSON. Under his leadership the establishment of a calendar year budget cycle for the Federal Government has been gaining considerable support in the Congress. I believe that in the previous Congress over a majority of the Senators cosponsored or expressed support for his proposal.

My first suggestion then is the improvement of the congressional budget process for the adoption of the Magnuson idea of moving to a calendar year.

Mr. President, the Congress has not completed action on all appropriations bills before the fiscal year for which the funds are being appropriated since World War II. In fact, less than 10 percent of the appropriated measures in the last decade were enacted before the start of the fiscal year. None were passed prior to the start of the fiscal years in either 1969 or 1970. We did better in the last Congress passing five out of 16 bills before the fiscal year in 1971 and three out of 12 bills before the start of the fiscal year 1972.

This, Mr. President, is intolerable. Delay in appropriating Federal funds is not conducive to planning or effective use of Federal funds. It is particularly disastrous for local education agencies and State and local governments. As a former member of the Maryland Legislature, I can say that knowing by December the Federal programs and their funding would be beneficial to the States in planning and budgeting for their fiscal years.

While there are many causes of the delay, such as proliferation of Federal programs and responsibilities, I am convinced that a move to the calendar year is an important first step in the improvement of our budget process.

BUDGET CEILING

Second, under my proposal, Congress would set its own budget ceiling and create a mechanism to make Congress discipline itself fiscally and make those hard decisions necessary in determining the country's priorities. This concept would work in the following manner. The Ways and Means and the Appropriations Committees of the House of Representatives, together with the Finance and the Appropriations Committees of the Senate, would meet jointly at the beginning of the new session to examine the President's budget and then make recommendations to both the House and the Senate on a budget ceiling. The full House and the Senate would then concur or modify the ceiling recommended by the joint committee. Once a joint resolution was enacted, however, the amount specified would be the spending ceiling for the year, unless Congress later lowered or raised the ceiling by a subsequent law.

My bill also provides a mechanism for forcing the Congress to abide by the ceiling which it set.

It does this by instructing the Appropriations Committee to determine the differences, as an average percent increase or decrease, by the congressional ceiling and then utilize such percentage as the guideline in considering all appropriation measures. Perhaps an example would clarify the workings of this procedure. Let us assume that the budget set by the Congress represented a 10-percent increase. The Appropriations Committee would then instruct its subcommittee that a 10-percent increase was the general guideline to be followed. If, for example, the Interior Subcommittee of the Appropriations Committee approved a 20-percent increase in the Interior Appropriations bill, and this sum were approved by the full committee, and upheld on the floor, the Appropriations Com-

mittee would then reduce the percentage guideline for other appropriations measures which may mean that the new guideline would be 9.8 percent. This proposal will result in all members having an interest in all appropriations measures, for an increase or decrease in one appropriations bill will lower or raise the percentage for other appropriations measures.

In short, Congress will be forced to face up to an unpleasant fact. Priority setting does not just mean passing, authorizing or appropriating bills with additional money, but also requires the balancing of the new proposals with other competing claims on limited Federal resources.

IMPROVE OVERSIGHT

Third, the bill would greatly strengthen the legislative oversight role of the Congress. The Legislative Reorganization Act of 1970 contemplated additional legislative review. While this idea was and is excellent, I do not believe that the act provided an adequate mechanism for achieving its goal. Therefore, this proposal is aimed at assuring an adequate, and not a cursory review, is made by the legislative committees of the Congress. It would do this by requiring each standing committee of the House and the Senate to establish a Subcommittee on Legislative Review. When a committee already has a subcommittee, with the responsibility with respect to a subject matter, that subcommittee, assisted by the Legislative Review Subcommittee, may evaluate the program or legislation.

However, if the subcommittee having jurisdiction failed to evaluate and make a report of its review and study at least once every 3 years, the Subcommittee on Legislative Review would then be mandated to conduct a review.

To make it absolutely certain that a review would be forthcoming in any event once every 5 years, the General Accounting Office would be required to make a study and report to the appropriate committee and the Congress if the review had not been done by either the appropriate subcommittee or the new Legislative Review Subcommittee, by the end of the fourth year.

This procedure will guarantee that the vital oversight function of the Congress will be accomplished.

FEDERAL PROGRAM EVALUATION DIGEST

Fourth, my bill would require the preparation of a Federal program evaluation digest. Presently, there is published each year the Catalog of Federal Domestic Assistance. This catalog runs some 817 pages and lists about 1,200 programs. It has proved useful to our citizens and our communities in determining what Federal programs or benefits are available and how to apply for them.

I see the need in the Congress, and elsewhere, for a similar publication that, in effect, would be a handy reference guide for all Federal programs. The Federal Program Evaluation Digest, would to the extent feasible, be cross-referenced to the Catalog of Federal Domestic Assistance and contain the following information:

First, the name of the program, the statute authorizing the program, specify the Federal officials administering the program, and give a brief description of the program;

Second, the original purposes, goals, and objectives of the program, and any changes thereto;

Third, an evaluation by the head of the program on whether and how the purposes, goals, and objectives are being achieved;

Fourth, references to any study, conducted partially or completely with Federal funds, evaluating the program, and to the maximum extent practicable, references to any study conducted completed with non-Federal funds, evaluating the program;

Fifth, the total administrative costs of the program paid out of Federal funds, the total costs of the program paid out of Federal funds, and the total of such administrative costs so paid as a percentage of such total costs so paid;

Sixth, the average cost to the program for each recipient; and

Seventh, cross-references to the program and matters related to the program which are included in the latest available catalog of Federal domestic assistance—including any supplements thereto.

There is a major distinction, however, in that this digest, unlike the catalog of Federal domestic assistance, would include all Federal programs and not just domestic programs except to the extent that national defense does not permit a program's listing.

How many of my colleagues, while on the Senate floor have been confronted with an amendment increasing an appropriation for a program for which there was no ready source of information that the digest would contain?

I believe that such a digest would be a useful and valuable tool for improving our understanding of programs and our ability to determine priorities.

COST PER FAMILY

Finally, the legislation contains a provision requiring all bills and joint resolutions introduced, and the report of any bills or joint resolutions by a committee to either Houses, to include the average cost per taxpaying family. While admittedly this requirement is gimmick-like, I believe it is needed and will serve an important purpose. Congress in recent years has passed various laws designed to better inform the consumer, acts like the truth-in-lending, truth-in-packaging, and others. This provision may be viewed as "truth-in-legislating."

This provision will require, that in addition to our taking the credit and heralding the benefits of programs. We also apprise the electorate of the program costs.

Perhaps there are better methods of computing the costs, but I believe that the thrust of the proposal is healthy for us in the Congress and good for the American taxpayer. As drafted, when a Member introduces a bill or an amendment, it would have to include an estimate of the cost of the legislation for each taxpaying family. This will be calculated by dividing the cost of the bill by the number of Federal tax returns filed with the Federal Government for the preceding calendar year. As an example, for taxable year 1971, 60 million taxable returns were filed with the Treasury. Since there are on the average 3.6 persons per family, the number of taxable returns approximates the number of families in the country. This will enable the average citizen to understand what a proposal means and costs to him personally. The late Senator Ellender in a floor speech tried to help the public comprehend the astronomical size of the debt, which then stood at nearly $400 billion. In this interesting and colorful floor speech, Senator Ellender said:

> If every member of the United States Senate counted two, one-dollar bills every second of every minute of every hour of every day of every week, it would take approximately 64 years to count $400 billion. If the senators worked the standard work year (8 hours per day for 260 days a year) taking no coffee breaks, or holidays or vacations, it would take them 267 years to accomplish the same count. At its current capacity, it would take the Bureau of Printing and Engraving about 171 years to print 400 billion one-dollar bills. Four hundred billion dollars in one-dollar bills would fill about 3,456 railway boxcars, making a train almost 36 miles long. The 400 billion one-dollar bills stacked on top of each other would reach about 27,095 miles, or 4.5 trips from New York to Los Angeles. Placed end to end, that many bills would make a path, 160 bills or 35 feet wide, to the moon.

This provision has a similar purpose. While citizens may have difficulty in comprehending billions, they will readily understand the cost per taxpaying family. This proposal should make Members of Congress more cost conscious and think harder and more realistically regarding the authorization and appropriation levels of the proposals he advances. Authorization levels in particular, that Congress has been approving, are often unrealistic. As former Secretary of Health, Education, and Welfare Elliot Richardson observed in a recent report:

> Historically, one set of committees in the House and Senate creates programs and another set actually provides the money for them. The political incentives for a member of an authorizing committee is to pass bills with big price tags—and much publicity—to show he "cares about solving problems." Such an incentive does not apply to members of appropriating committees. Time after time the figures on the price tag are higher than anything the executive branch can in good conscience request, and higher than anything that appropriations committees are willing to provide.
>
> There results, then, an "Authorization-Appropriation gap"—A gap which has grown by $3 billion in the last year alone and is now over $13 billion. For the public, the authorization-appropriation process has become, in a sense, a shell game. Hopes are raised by attention to the authorizing hoopla, only to be dashed by the less flamboyant hand of the appropriations process.

Mr. President, over-promising in authorization bills leads to big disappointment and disillusionment on the part of our citizens. In addition, this part of my proposal would direct the Library of Congress to tabulate a total cost per taxpaying family of the authorization AMD appropriations passed for each week and a running year-to-date total. These totals would be printed weekly in the CON-

GRESSIONAL RECORD as soon as the tabulation is completed.

As the Wall Street Journal of January 28, 1972 stated:

Any procedural reform that encouraged the Congress to be aware of the overall effect of their individual actions would have substantial benefits for us all." . . . "It would be a healthy discipline for Congress to ask each sponsor of a spending bill to also say how the money is to be raised since a government that is running a $40 billion deficit obviously doesn't have spare cash lying around.

Mr. President, the Nation rejoices over the President's success in negotiating an end to the long and difficult war in Vietnam. We all hope and pray that the peace will be permanent so that the "Generation of peace" about which the President has so often spoken will come to us.

The economic news has also been very encouraging as we have had considerable success in getting the economy straightened out and back on the right track—1972 was a year of strong economic advances, increased employment, and a lower rate of inflation.

We are encouraged by the prospects of permanent peace and prosperity without inflation for our citizens.

A few years ago it was fashionable to speak of the "peace dividend" that would be available after the war was concluded. Brookings Institution in the book entitled, "Setting National Priorities—the 1973 Budget" pointed out that the surplus, for a variety of reasons, has disappeared. The Brookings study says:

On balance, the tax changes enacted during the past ten years have reduced Federal revenues substantially; full employment revenues in fiscal 1973 will be $27 billion lower than they would have been under the tax laws in effect ten years ago. Moreover, the recent reductions in tax rates and the expanded scope of the Federal Government's activities have produced a situation in which the annual built-in growth in Federal expenditures now tends to absorb a very large part of the increase in Federal revenues generated by an expanding full employment economy. Indeed, for the next several years the growth in Federal expenditures under existing programs and those proposed in the 1973 budget may exceed the growth in full employment revenues under current tax laws. By 1977, revenues increases may have equaled the growth in expenditures, but they are not likely to produce a surplus for use in launching major new governmental programs to meet emerging national priorities. This situation is in sharp contrast to earlier periods in the Nation's economic history, during which peace-time economic growth tended to produce larger gains in Federal revenues than were absorbed by ongoing Federal expenditure programs. As a consequence—in the near future at least—major new Federal programs will have to be financed either from higher taxes or from sharp reductions in current activities.

The last line of this quote bears repeating:

As a consequence in the near future at least major new Federal programs will have to be financed either from higher taxes or from sharp reductions in current activities."

A similar theme was sounded in an article entitled "The Bad News About the Federal Budget" in November 1972 Fortune magazine. The analysis by this respected publication, if their projections come true, would be bad news indeed. Herbert Stein, the Chairman of the President's Council on Economic Advisers, has indicated that coping with the budget will be the top priority task facing the President in his new term. Mr. Stein was quoted in Fortune as saying that:

The President sees the budget problem, in all its aspects, converging on him. And it amounts to a crisis of serious proportions.

Fortune then goes on to say:

But the situation is even worse than the Administration has acknowledged. The problem is not just that the fiscal 1973 will show a deficit of around $30 billion. It is rather that—unless spending programs are cut back or revenues are increased—succeeding years will continue to show big deficits. "Fortune" predicts that by fiscal 1977, the total Federal budget will be in the neighborhood of $369 billion compared to the Office of Management and Budget's projections of $327 billion. Thus, under the Office of Management and Budget's assumptions, the 1977 budget will be $77 billion more than the 1973 budget. "Fortune" projections, on the other hand, see the budget at $119 billion more than the 1973 budget.

"Fortune" sees a deficit of $24 billion in 1977, rather than the $19 billion surplus projected by the administration and warns this is a troubling prospect. Big deficits over the next several years would unsettle money markets, foster inflation, and worsen the Nation's international economic difficulties.

While there are many estimates for the deficit for fiscal 1973 and 1974, I believe that there is enormous hazards of budget deficits in the $25 to $35 billion range and that we should be moving toward a balanced budget.

The new budget for fiscal 1974 has now been revealed. It calls for spending of $268.7 billion and there is a projected deficit of $12 billion and, important for the American public, no new taxes.

The current fiscal year, which ends June 30, is expected to produce a deficit of $25 billion. I was also encouraged that both Majority Leader MANSFIELD and House Speaker ALBERT have indicated that the Congress would seek to hold the overall spending for both fiscal 1973 and fiscal 1974, as requested by the President.

The majority leader was quoted as saying that it is mandatory that Congress discipline itself in the budget area, for the "American people are being taxed to death."

Mr. President, it is mandatory that we in the Congress do a better job in the budget oversight process and the legislative oversight area.

For the last decade the Congress and the executive branch seemed to be competing to find bigger and better ways to spend the taxpayers' dollar. We did this on a bipartisan basis. We did it to accomplish worthy objectives. We enacted program after program in response to the problems of the day, and since the decade was not lacking in problems, programs proliferated. In enacting new programs, often little thought was given to existing programs and how they would mesh or conflict with the new program. It is hard to recall Congress standing up and saying "this program has outlived its usefulness," or "this program is not working; we are going to repeal it."

As I previously indicated, the developments referred to in the Brookings study, the proliferation of Federal programs, and the resulting built-in growth which so concerned Fortune magazine, means that Federal revenues are not running ahead of Federal expenditures. What this means is that the administration and the Congress now must face up to the economic facts of life.

Having served in the State legislature, I must say that the restraints and the discipline were much greater at that level, for State governments have no choice as there are usually constitutional requirements that State budgets be in balance.

Now I want to make it clear that we as compassionate people need to respond to our many domestic problems and that there will be a need for new programs to deal with these problems as the Nation continues its climb to even greater social, economic, and political opportunities for all Americans.

But we have reached a point when we must take stock of our efforts. We must look at all programs to see if they are the best response to a particular problem and we must make certain that the level of Government best able to deliver a particular program or service does so.

Solutions to all our problems cannot be prepackaged in Washington. There is no way that Federal officials can know the local conditions and problems of the many communities across this great land, communities which are as diverse as our people.

It is through this power of the purse that Congress has its greatest impact on the priorities of Government and can effect changes in programs and policies.

We have reached a point when we can no longer evaluate a program or an appropriations measure in isolation. Just as the average family cannot do everything that is needed or good, we in the Congress have to make similar tough choices in view of the impact of our individual actions on the total picture.

The Congress is rightly concerned about the erosion of its powers. Members are rightly concerned over the issue raised by the President's request for authority to reduce spending as he saw fit, down to the $250 billion level and by the issue raised in the impoundment of Federal funds. These are legitimate issues of great constitutional depth and importance.

Unquestionably, one of the greatest powers possessed by the Congress is the appropriation of money for the operation of the executive branch.

There is, with considerable justification, congressional concern in these areas.

On the other hand, the President's right to impound funds has been unchallenged for many years. It is an action that has been taken many times by a number of chief executives of both parties. Unquestionably, over the last decade it has resulted in reducing budget deficits that Congress has failed to reduce by use of the appropriations process. In a sense we in the Congress have said we will authorize any amount. We will appropriate more realistically but

on an individual appropriation bill basis without any controls or guidelines and with little thought over what we did on the appropriations bill we passed yesterday, or the one that will come before us tomorrow. We in effect will forget about the total amount appropriated; let the President worry about this detail, and take the heat of reducing funds for specific programs; and this has been pretty much the story.

The appropriation power of the Congress is and should be a jealously guarded constitutional right. But like most constitutional rights this power exists with a certain amount of responsibility and must be discharged in a responsible manner or the power will be lessened.

This to some degree is what has happened. As a result the President, and the executive branch have assumed even greater power and stepped into the void.

As Senator MANSFIELD elloquently put it before a caucus of Democratic Senators on January 3:

> The fault lies not in the executive branch but in ourselves in the Congress. We cannot insist upon the power to control expenditures and then fail to do so. If we do not do the job, if we continue to abdicate our Constitutional responsibility, the powers of the Federal Government will have to be recast so that it can be done elsewhere. We must face the fact that an institution, Congress, is not readily equipped to carry out this complex responsibility. By tradition and practice, for example, each Senate Committee proceeds largely in its own way in the matter of authorizing expenditures. There is no standing Senate mechanism for reviewing expenditures to determine where they may fit into an overall program of government.

So Mr. President, if Congress wishes to reassert itself with respect to the power of the purse, we must resolve to take the necessary steps and create the mechanism that will enable us to control Federal spending and determine Federal priorities.

Again, I am encouraged with the attention this subject is receiving in the Congress, as evidenced by the debate last year on the debt extension, the appointment of a Joint Committee on Budget Control, and the concern expressed by majority leaders and others.

In addition, the subject has been receiving considerable national attention in the communications media. I am hopeful that this interest will result in the Congress facing up to this problem.

Mr. President, I do not regard these proposals as a panacea or millennium to the problems and the need for reform in the Congress. I am convinced, however, that the proposals I am advancing today will help bring the budgetary process under control, improve our oversight responsibilities, and help revitalize the Congress.

If we take the actions called for in my proposal, the present vacuum, which the executive branch has been filling because of Congress' inability or unwillingness to reform itself, will be removed and we will be in a better position to deal with other serious challenges by the executive branch, such as the impoundment of funds, because we will have demonstrated not only by our words, but more importantly by our actions that we can and will control the budget and determine national priorities.

How we in the Congress respond to correct our generally acknowledged weaknesses with respect to the overall reform of the Federal Government's budget will in no small way determine the answer to the country and the Congress concern over the erosion of congressional power, the congressional role in determining national priorities, and the Nation's ability to avoid inflation and to preserve prosperity in 1973, 1974, and the years ahead.

I am pleased to join in the congressional search for the ways and means to improve the congressional budgetary process and oversight functions. Of all the issues on congressional reform, this is probably the most important and, I hope for the country and the Congress sake, that we will face up to this issue and take action in this Congress.

I ask unanimous consent to have the text of the bill printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 758

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Congressional Budget Control and Oversight Improvement Act".

TITLE I—CHANGE OF FISCAL YEAR

CALENDAR YEAR AS NEW FISCAL YEAR

SEC. 101. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations—

"(1) shall, through June 30, 1974, commence on July 1 of each year and end on June 30 of the following year;

"(2) shall for the period commencing July 1, 1974, and ending on December 31, 1974, be for such period; and

"(3) shall, beginning on January 1, 1975, commence on January 1 of each year and end on December 31 of that same year.

"(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

SPECIAL APPROPRIATION

SEC. 102. For the fiscal year commencing July 1, 1974, and ending December 31, 1974, there are appropriated, out of any money in the Treasury not otherwise appropriated, for any projects or activities conducted in the fiscal year ending June 30, 1974, for which authority to conduct such project or activity did not expire prior to June 30, 1974, an amount equal to 50 per cent of the amount appropriated for that project or activity for such fiscal year ending on June 30, 1974. Appropriations made under this section shall be available to the extent and in the manner appropriations were made available for that project or activity during the fiscal year ending on June 30, 1974.

TRANSMITTAL OF BUDGET AND EXPENDITURE MESSAGES

SEC. 103. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended—

(1) by striking out of that matter of subsection (a) preceding clause (1) the phrase "during the first fifteen days of each regular session" and inserting in lieu thereof", at the time specified in subsection (e)(1)";

(2) by striking out in subsection (a)(5) "on or before October 15 of each year," and inserting in lieu thereof ", at the time specified in subsection (e)(2),";

(3) by striking out in subsection (b) "on or before June 1 of each year, beginning with 1972," and inserting in lieu thereof "at the time specified in subsection (e)(3)";

(4) by striking out in subsection (c) "on or before June 1 of each year, beginning with 1972," and inserting in lieu thereof "at the time specified in subsection (e)(4)"; and

(5) by adding at the end thereof the following new subsection:

"(d) In addition to the information required by subsection (a), the budget shall contain a statement, in such form and detail as the President may determine, of the capital assets of the Government, and their value, as of the end of the last completed fiscal year.

"(e)(1) In accordance with subsection (a), the President shall transmit each budget to the Congress as follows:

"(A) for the fiscal year ending on June 30, 1974, during the first fifteen days of that regular session of the Congress which assembles under section 2 of article XX of the articles of amendment to the Constitution prior to the commencement of the fiscal year; and

"(B) for each fiscal year beginning on or after January 1, 1975, on or before April 15 of the year preceding the commencement of that fiscal year.

"(2) In accordance with subsection (a)(5), estimated expenditures and proposed appropriations for such legislative branch and Supreme Court shall be transmitted to the President, for each fiscal year commencing on and after January 1, 1975, not later than January 15 of the year preceding that fiscal year.

"(3) In accordance with subsection (b), the President shall transmit each supplementary summary of the budget to the Congress, for each fiscal year beginning on or after January 1, 1975, on or before October 1 of the year preceding that fiscal year.

"(4) In accordance with subsection (c), the President shall transmit summaries of estimated expenditures on June 1, 1974, and November 1 of each year thereafter.

"(f) No budget, supplementary summary of the budget, or estimated expenditures and proposed appropriations for such legislative branch and Supreme Court shall be transmitted for the fiscal year commencing July 1, 1974, and ending on December 31, 1974. For purposes of subsection (a)(7), the phrase 'last completed fiscal year' shall mean, for the budget to be transmitted to the Congress on or before April 15, 1974, for the fiscal year commencing on January 1, 1975, each of those fiscal years ending on June 30, 1974, and December 31, 1974. The fiscal year ending on December 31, 1974, shall not be considered a fiscal year for purposes of subsection (c).

"(g) If the Congress is not in session on the day on which the President submits a budget, a supplementary summary of the budget, or a summary of estimated expenditures, such budget or summary shall be transmitted to the Clerk of the House of Representatives and shall be printed as a document of the House of Representatives."

ACCOUNTING PROCEDURES

SEC. 104. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes," approved July 25, 1956, as amended (31 U.S.C. 701), is amended to read as follows:

"(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligations, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".

(b) Subsection (b) of such section is amended to read as follows:

"(b) (1) Any obligated balance referred to in subsection (a) (1) of this section shall be transferred as follows:

"(A) for any fiscal year or years ending on or before June 30, 1974, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and

"(B) for any fiscal year commencing on or after July 1, 1974, on December 31 of the second fiscal year following the fiscal year or years for which the appropriation is available for obligation.

"(2) The withdrawals required by subsection (a) (2) of this section shall be made—

"(A) for any fiscal year ending on or before June 30, 1974, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

"(B) for any fiscal year commencing on or after July 1, 1974, not later than March 1 following the fiscal year in which the period of availability for obligation expires."

ECONOMIC REPORTS

SEC. 105. (a) Section 3 of the Employment Act of 1946 (15 U.S.C. 1022), is amended by striking out "The President shall transmit to the Congress not later than January 20 of each year" and inserting in lieu thereof the following: "Not later than January 20 of each year before 1975, and not later than April 15 of each year after 1974, the President shall transmit to the Congress".

(b) Section 5(b) (3) of such Act (15 U.S.C. 1024) is amended by striking out "(beginning with the year 1947)" and inserting in lieu thereof "before 1975 and not later than June 1 of each year after 1974,".

CONVERSION OF AUTHORIZATIONS OF APPROPRIATIONS

SEC. 106. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1973, be considered as meaning January 1 of the year following that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1974, be considered as meaning December 31 of that same year. Any law providing for an authorization of appropriations for the fiscal year 1975 or any fiscal year thereafter shall be construed as referring to that fiscal year commencing on January 1 and ending on December 31 of the calendar year having the same calendar year number as the fiscal year number.

REPEALS

SEC. 107. The following provisions of law are repealed:

(1) the ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) the proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

TECHNICAL AMENDMENT

SEC. 108. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "December 31".

(b) The provisions of this section shall be applicable with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after January 1, 1975.

TITLE II—APPROPRIATIONS CEILING DEFINITIONS

SEC. 201. For purposes of this title—

(1) "Budget" means the Budget of the United States Government transmitted to the Congress by the President pursuant to the Budget and Accounting Act, 1921; and

(2) "obligational authority" includes loan authority.

RECOMMENDATION OF APPROPRIATION CEILING

SEC. 202. (a) The Committee on Ways and Means and the Committee on Appropriations of the House of Representatives, and the Committee on Finance and the Committee on Appropriations of the Senate, or duly authorized subcommittees thereof, shall meet jointly at the beginning of each regular session of Congress and after study and consultation, giving due consideration to the budget transmitted by the President, make a recommendation to their respective Houses specifying the total amount of new obligational authority to be made available in appropriations measures for such year. Not later than May 30 of each year (commencing in 1974), the Committee on Ways and Means and the Committee on Appropriations of the House of Representatives shall report to the House, and the Committee on Finance and the Committee on Appropriations of the Senate, shall report to the Senate, by joint resolution, the recommendation of those four committees specifying the total amount of new obligational authority to be made available for the fiscal year for which the Budget was transmitted.

(b) (1) It shall not be in order in either House of Congress to consider any measure providing new obligational authority with respect to any fiscal year until there has been enacted into law with respect to such final year a joint resolution of the kind referred to in subsection (a) of this section.

(2) The provisions of paragraph (1) shall not preclude the holding of hearings or other consideration of the Budget submitted by the President by any committee of the Senate or the House of Representatives, or any subcommittee thereof, or by any joint committee of the two Houses, or any subcommittee thereof.

(c) After such a joint resolution has been enacted into law with respect to such fiscal year, the amount so specified shall be effective for purposes of this title unless there subsequently has been enacted into law a joint resolution with respect to such fiscal year specifying a different amount. If such a joint resolution has been enacted, the amount specified in such subsequent joint resolution shall be effective for purposes of this title for such fiscal year.

CONSIDERATION OF APPROPRIATIONS MEASURES

SEC. 203.(a) The Committee on Appropriations of each House shall determine the difference, as an average percentage increase or decrease, between the total amount of new obligational authority requested in the budget for that year and the total amount of new obligational authority authorized in the joint resolution referred to in section 202 with respect to that year, or any such subsequent joint resolution, as the case may be. The percentage increase or decrease shall serve as a general guideline for the Appropriations Committees of the two Houses, including the subcommittees of such committees, in preparing and reporting measures making available new obligational authority for such fiscal year.

(b) Except as otherwise provided in subsection (c) of this section, it shall not be in order for the Committee on Appropriations of either House to report a measure making new obligational authority available for a fiscal year which exceeds in the aggregate an amount equal to the sum of new obligational authority requested by the President with respect to matters included in such measure for such year after increasing or decreasing such amount by the percentage determined under subsection (a) of this section.

(c) (1) After a measure is passed in either House of Congress making new obligational authority available with respect to a fiscal year, the percentage determined under subsection (a) shall be revised by the Committee on Appropriations for that House of Congress. The revised percentage for each subsequent appropriations measure for that year shall take into account (A) the new obligational authority enacted into law for that year and any appropriations measures passed by that House for that fiscal year which have not been enacted into law, (B) the amount remaining after substracting the sum determined under clause (A) from the new obligational authority authorized in the joint resolution with respect to that fiscal year, and (C) the amount of new obligational authority requested by the President with respect to those matters not yet enacted into law and not included in appropriations measures passed by that House with respect to such fiscal year.

(2) It shall not be in order for the Committee on Appropriations of either House to report a measure making new obligational authority available with respect to a fiscal year which exceeds in the aggregate an amount equal to the amount of new obligational authority requested by the President with respect to the matters in such measure, after increasing or decreasing such amount by the revised percentage determined under paragraph (1) of this subsection with respect to such measure.

TITLE III—CONGRESSIONAL OVERSIGHT AND INFORMATION

SEC. 301. (a) Section 136 of the Legislative Reorganization Act of 1946 is amended to read as follows:

"LEGISLATIVE REVIEW

"SEC. 136. (a) In order to assist the Congress in—

"(1) its analysis, appraisal, and evaluation of the application, administration, and execution of the laws enacted by the Congress; and

"(2) its formulation, consideration, and enactment of such modifications of or changes in those laws, and of such additional legislation as may be necessary or appropriate;

each standing committee of the Senate and the House of Representatives shall establish a Subcommittee on Legislative Review. In the case of a committee having one or more subcommittees to which the committee has given responsibility for considering and making recommendations with respect to subject matters within the subject jurisdiction of the committee, the Subcommittee on Legislative Review shall assist that subcommittee in reviewing and studying the application, administration, and execution of those laws, or parts of laws, which are within such responsibility. Any such subcommittee shall make a report on the results of its review and study at least once every three years. In the event the subcommittee has not made a report within a three-year period, the Subcommittee on Legislative Review of the committee shall make such review and study, and submit a report thereon to the committee, not later than one year after the subcommittee having such responsibility was to have made such report. In the case of any subject matter not within the responsibility of any particular subcommittee of the committee, the Subcommittee on Legislative Review of that committee shall make such review and study with respect to such subject matter and submit a report therein to the committee not less than once every third year.

"(b) In any case in which the Subcommittee on Legislative Review has not submitted a report to be prepared by it under subsection (a) of this section, within the period of time provided in that subsection, the Comptroller General shall, within one year after the last day on which the Subcommittee report was to have been submitted, make such study and report the Subcommittee was to have made, and submit a report thereon to the committee.

"(c) The provisions of this section do not apply to the Committee on Appropriations of the Senate and the Committees on Appropriation, House Administration, Rules, and Standards of Official Conduct of the House of Representatives."

(b) Item 136 of the table of contents of the Legislative Reorganization Act of 1946 is amended to read as follows:

"SEC. 136. Legislative review."

ESTIMATES OF COSTS TO EACH TAX-PAYING FAMILY OF LEGISLATIVE PROPOSALS

SEC. 302. (a) (1) Any bill or joint resolution of a public character introduced in the Senate or the House of Representatives, and the report on any such bill or joint resolution reported by any committee of either House shall contain an estimate of the average cost for each tax-paying family, if that bill or joint resolution were to be enacted into law. Such estimate shall be determined by dividing the total amount of funds of the United States Government expected to be obligated in carrying out such bill or joint resolution by the estimated number of Federal tax returns filed with the United States Government for the year immediately preceding the year in which the bill or joint resolution is introduced or reported, as the case may be.

(2) It shall not be in order to receive or consider any bill or joint resolution referred to in paragraph (1) of this subsection unless the provisions of such paragraph have been satisfied.

(3) For purposes of this subsection, the members of the Joint Committee on Atomic Energy who are Members of the Senate shall be deemed to be a committee of the Senate, and the members of such Joint Committee who are Members of the House of Representatives shall be deemed a committee of the House.

(b) At the end of any week during which either House of the Congress has been in session for at least one day, the Congressional Research Service in the Library of Congress shall tabulate the total amount of authorizations of appropriations and appropriations passed by bill or joint resolution by each House during that week, the average cost for each tax-paying family for each bill or joint resolution passed by either House during such week, and the total amounts of authorizations of appropriations and of appropriations passed by each House from the first day of that session of Congress through the week for which the tabulation is made. Each such tabulation shall be printed in that issue of the Congressional Record which is first published after the tabulation for that week is completed.

FEDERAL PROGRAM EVALUATION DIGEST

SEC. 303. The Director of the Office of Management and Budget shall be responsible for preparing and making available each year a digest of all Federal programs, except any program that the President determines should not be included on the grounds of National security. With respect to each program, the digest shall—

(1) state the name of the program, the statute authorizing the program, specify the Federal officials administering the program, and give a brief description of the program;

(2) state the original purposes, goals, and objectives of the program, and any changes thereto;

(3) include an evaluation by the head of the program on whether and how the purposes, goals, and objectives are being achieved;

(4) include references to any study, conducted partially or completely with Federal funds, evaluating the program, and, to the maximum extent practicable, references to any study conducted completely with non-Federal funds, evaluating the program;

(5) state the total administrative costs of the program paid out of Federal funds, the total costs of the program paid out of Federal funds, and the total of such administrative costs so paid as a percentage of such total costs so paid;

(7) to the maximum extent practicable, include cross-references to the program and matters related to the program which are included in the latest available catalog of Federal Domestic Assistance (including any supplements thereto).

TITLE IV—GENERAL

EXERCISE OF RULE-MAKING POWERS

SEC. 401. The provisions of sections 202, 203, 301, and 302 of this Act are enacted by the Congress—

(1) as an exercise of the rule-making powers of the Senate and the House of Representatives, respectively, or of that House to which they specifically apply; and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to the procedure in such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House, except that such House may change the provisions of such sections with respect to that House only by a vote of two-thirds of the Members of that House present and voting.

Mr. GRIFFIN. Mr. President, I wish to commend the distinguished Senator from Maryland for his thoughtful and constructive statement on a very important subject. I wish to register my agreement and to associate myself with most of what he said. In addition, Mr. President, I hope I may be able to add some perspective to consideration of the impoundment of funds by the President.

Mr. President, as a preliminary inquiry, may I ask whether or not the report sent up today, addressed to the President of the Senate, setting forth a statement by the administration on impoundment of funds or reserves—as they are referred to—will, in normal course, be printed in the RECORD.

The ACTING PRESIDENT pro tempore. If it is received from the Vice President's office it will be printed in the RECORD by title, but not in total.

Mr. GRIFFIN. Would it be in order to request that the report be printed in the RECORD?

The ACTING PRESIDENT pro tempore. Yes, it would.

IMPOUNDMENT OF FUNDS

Mr. GRIFFIN. Mr. President, today the administration has sent to both Houses of Congress a detailed report concerning impoundment of funds.

I ask unanimous consent that the report be printed in the RECORD at this point.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, and I shall not object, is this statement to which my amendment some days ago referred and in which the date of February 5 was inserted at the request of the distinguished assistant Republican leader while the amendment was being considered in the Senate to, I believe, House Joint Resolution 1 and later changed to February 10?

Mr. GRIFFIN. I believe that is correct.

Mr. ROBERT C. BYRD. And that was the full intent and purpose of the amendment.

Mr. GRIFFIN. Mr. President, its my understanding that the report was prepared in response to that request. I believe the Senator from West Virginia is to be commended for his amendment.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator. I have no objection. I thank the Senator for having the information printed in the RECORD.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

EXECUTIVE OFFICE OF THE PRESIDENT,
Washington, D.C., February 5, 1973.

Hon. SPIRO T. AGNEW,
President of the Senate,
Washington, D.C.

DEAR MR. PRESIDENT: The enclosed report is submitted pursuant to Title IV of Public Law 92–599, the "Federal Impoundment and Information Act." In accordance with that Act, the report is being transmitted to the Congress and to the Comptroller General of the United States, and will be published in the Federal Register.

The pressure of work on the formulation of the 1974 Budget—which was sent to the Congress on January 29—taxed our staff resources to capacity (and perhaps beyond) for the last three months. As soon as the 1974 Budget was being completed, we began to compile this report so that it could be transmitted to the Congress at the earliest possible date. We believe that the report is complete and we have furnished it as quickly as possible under the prevailing circumstances.

Sincerely,

ROY L. ASH,
Director.

BUDGETARY RESERVES AS OF JANUARY 29, 1973

INTRODUCTION

The Director of the Office of Management and Budget, under authority delegated by the President, is required to apportion funds provided by the Congress. The apportionments are required under the Anti-deficiency Act (31 U.S.C. 665) and generally are for the current fiscal year. Under the law, such apportionments limit the amounts which may be obligated during specific periods.

The Anti-deficiency Act authorizes the withholding of funds from apportionment to provide for contingencies; or to effect savings made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which the funds were made available. There are also occasions when specific provisions of law provide that the funds should be available for use over periods longer than one year; in such cases, they general are not fully apportioned in the current year, and the unapportioned part is withheld to be released later for use in the next year or years. Thus, some amounts are withheld from apportionment, either temporarily or for longer periods. In these cases, the funds not apportioned are said to be held or placed "in reserve." This practice is one of long standing and has been exercised by all recent administrations as a customary part of financial management.

On occasion the Congress has explicitly required that an amount be placed in reserve pending an administrative determination of need (e.g., the 1973 Agriculture-Environmental and Consumer Protection Appropriations Act—Public Law 92–399). Most reserves, however, are established upon the initiative of the Executive Branch based on an operational knowledge of the status of the specific projects or activities. For example, when the required amount of work can be accomplished at less cost than had been anticipated when the appropriation was made, a reserve assures that savings can be

realized and, if appropriate, returned to the Treasury. In other cases, specific apportionments sometimes await (1) development by the affected agencies of approved plans and specifications, (2) completion of studies for the effective use of the funds, including necessary coordination with the other Federal and non-Federal parties that might be involved, (3) establishment of a necessary organization and designation of accountable officers to manage the programs, or (4) the arrival of certain contingencies under which the funds must by statute be made available (e.g., certain direct Federal credit aids when private sector loans are not available).

From time to time additional reserves are established for such reasons as the necessity to conform to the requirements of other laws. An example is the executive's responsibility to stay within the statutory limitation on the outstanding public debt.

The total of all current reserves is 3.5% of the total unified budget outlays for fiscal year 1973 (as estimated in the 1974 Budget). The comparable percentage at the end of fiscal years 1959 through 1961 ranged from 7.5% to 8.7%. At the end of fiscal year 1967, it stood at 6.7%. At the end of 1972, it was 4.6%. But a range in the neighborhood of 6% has been normal over most of the last decade.

REPORT REQUIRED BY LAW

This report is submitted in fulfillment of the requirements of Title IV of Public Law 92-599, the "Federal Impoundment and Information Act," enacted October 27, 1972, which provides for a report of "impoundments," and certain other information pertaining thereto. This report lists the budgetary reserves which were in effect as of January 29, 1973.

The reserves listed are consistent with the 1974 Budget, transmitted to the Congress on January 29, 1973. Therefore, the estimated fiscal, economic, and budgetary effects of these reserves have been reflected in the estimates and other information in that budget. (This statement is made in response to item Number 7 of the Federal Impoundment and Information Act.)

The Anti-deficiency Act requires that all apportionments be reviewed at least quarterly, and that reapportionments be made or reserves be established, modified, or released as may be necessary to further the effective use of the funds concerned. Thus, in answer to item Number 5 of the Federal Impoundment and Information Act, the period of time during which funds are to be in reserve is dependent in all cases upon the results of such later review.

Several rescissions of 1973 appropriations have been proposed to the Congress in the 1974 Budget. These amounts have been apportioned to the agencies pending Congressional action (that is, they have *not* been placed in reserve). The items and amounts proposed for rescission are as follows:

Department of Health, Education, and Welfare:	
Food and Drug Administration: Food, drug, and product safety	$17,252,000
Health Services and Mental Health Administration: Indian health services	4,708,000
Office of Education:	
Indian education	18,000,000
Higher education	44,300,000
Library resources	2,857,000
Educational renewal	11,890,000
Department of Labor:	
Manpower Administration: Manpower Training Services	283,881,000

The remainder of this report lists, by agency, all accounts for which some funds are reserved. For each account, it:

Presents the amount apportioned for the current fiscal year;

Presents the amount in reserve;

States whether the amount reserved will be legally available for obligation in the next fiscal year;

Indicates the date of the reserve action and the effective date of the reserve; and

Presents (by code) authority and reason for the reserve, without necessarily exhausting all possible authorities and reasons.

Codes used in the remainder of this report for the authorities and reasons for the reserve actions are described below:

Code and authority and reasons for present action

1—"To provide for contingencies" (31 USC 665(c)(2)).

2—"To effect savings whenever savings are made possible by or through changes in requirements, greater efficiency of operations, or other developments subsequent to the date on which such (funds were) made available" (31 USC 665(c)(2)).

3—To reduce the amount of or to avoid requesting a deficiency or supplemental appropriation in cases of appropriations available for obligation for only the current year (31 USC 665(c)(1)).

4—"To achieve the most effective and economical use" of funds available for periods beyond the current fiscal year (31 USC 665(c)(1)). This explanation includes reserves established to carry out the Congressional intent that funds provided for periods greater than one year should be so apportioned that they will be available for the future periods.

5—Temporary deferral pending the establishment of administrative machinery (not yet in place) or the obtaining of sufficient information (not yet available) properly to apportion the funds and to insure that the funds will be used in "the most effective and economical" manner (31 USC 665(c)(1)). This explanation includes reserves for which apportionment awaits the development by the agency of approved plans, designs, specifications.

6—The President's constitutional duty to "take care that the laws be faithfully executed" (U.S. Constitution, Article II, Section 3).

6a—Obligation at this time of amount in reserve is likely to contravene law regarding the environment; or the amount in reserve is being held pending further study to evaluate the environmental impact of the affected projects (activities) as required by law.

6b—Existing tax laws and the statutory limitation on the national debt (as provided under Public Law 92-599) will not provide sufficient funds in the current fiscal year to cover the total of all outlays in that year contemplated by the individual acts of Congress.

6c—Action taken pursuant to President's responsibility to help maintain economic stability without undue price and cost increases (P.L. 92-210, which amended Section 203 of P.L. 91-379).

6d—Amount apportioned reflects the level of obligations implicitly approved by the Congress in its review of and action on the appropriation required to liquidate obligations under existing contract authority.

6e—Other. See footnote for each item so coded.

7—The President's constitutional authority and responsibility as Commander in Chief (U.S. Constitution, Article II, Section 2).

8—The President's constitutional authority and responsibility for the conduct of foreign affairs (U.S. Constittuion, Article II, Section 2).

9—Other. See footnote for each item so coded.

Budgetary reserves, as of January 29, 1973

[Dollars in thousands]

(Amount apportioned, amount in reserve, available beyond fiscal year 1973?, date of reserve action, effective date of reserve, and authority and reason for reserve)

Executive Office of the President, Council on Environmental Quality: Salaries and expenses—$2,230, $320, No, 1/12/73, 1/12/73, 5.

Council on International Economic Policy: Salaries and expenses—300, 700, No, 11/28/72, 11/28/72, 5.

National Security Council: Salaries and expenses—2,637, 125, No, 8/4/72, 8/4/72, 5.

Special Action Office on Drug Abuse Prevention: Salaries and expenses—6,315, 2,027, Yes, 8/21/72, 8/21/72, 4, 5.

Funds Appropriated to the President, Appalachian Regional Commission: Appalachian regional development programs—340,263, 65,000, Yes, 9/22/72, 9/22/72, 5, 6c.

Agency for International Development: Prototype desalting plant: ——[1], 20,000, Yes, 4/7/72, 7/1/72, 5.

The Inter-American Foundation: Inter-American Foundation—8,000, 41,624, Yes, 1/10/72, 7/1/72, 4, 6e.[2]

Department of Agriculture, Office of the Secretary: Office of the Secretary—11,312, 583, No, 1/26/73, 1/26/73, 6b.

Office of the Inspector General: Office of the Inspector General—18,774, 450, No, 1/26/73, 1/26/73, 6b.

Office of the General Counsel: Office of the General Counsel—6,913, 13, No, 1/26/73, 1/26/73, 6b.

Office of Management Services: Office of Management Services—5,534, 6, No, 1/26/73, 1/26/73, 6b.

Agricultural Research Service: Agricultural Research Service— 200,402, 8,464, No, 1/26/73, 1/26/73, 6b.

Construction—3,598, 1,720, Yes, 1/26/73, 1/26/73, 4, 6b.

Animal and Plant Health Inspection Service: Animal and plant health inspection service—323, 410, 2,055, No, 1/29/73, 1/29/73, 1, 5, 6b, 6e 3.[3]

Cooperative State Research Service: Cooperative State research service—88,388, 3,530, No, 1/26/73, 1/26/73, 5, 6b, 6e.[3]

Extension Service: Extension service—190,-427, 5,053, No. 1/26/73, 1/26/73, 5, 6b, 6e.[3]

National Agriculture Library: National Agricultural Library—4,408, 6, No, 1/26/73, 1/26/73, 6b.

Statistical Reporting Service: Statistical reporting service—25,042, 267, No, 1/26/73, 1/26/73, 6b.

Economic Research Service: Economic research service—18,689, 337, No, 1/26/73, 1/26/73, 6b.

Commodity Exchange Authority: Commodity exchange authority—2,894, 12, No, 1/26/73, 1/26/73, 6b.

Packers and Stockyards Administration: Packers and stockyards administration—4,014, 43, No, 1/26/73, 1/26/73, 6b.

Farmers Cooperative Service: Farmers cooperative service—2,060, 115, No, 1/26/73, 1/26/73, 6b.

Foreign Agricultural Service: Foreign Agricultural service—28,932, 117, No, 1/26/73, 1/26/73, 6b.

Salaries and expenses, Special foreign current program—1,000, 2,240, Yes, 1/26/73, 1/26/73, 4.

Agricultural Stabilization and Conservation Service: Rural environmental assistance—15,000, 210,500, Yes, 1/26/73, 1/26/73, 6b.

Water bank act program—8,489, 11,391, Yes, 1/26/73, 1/26/73, 6[4].

Emergency conservation measures—20,000, 3,670, Yes, 12/30/72, 12/30/72, 1.

Rural development service—394, 6, No, 1/26/73, 1/26/73, 6b.

Footnotes at end of article.

Dairy and beekeepers indemnity program—7,294, 2,500, Yes, 1/26/73, 1/26/73, 4.

Commodity Credit Corporation: Limitation on administrative expenses—37,034, 2,866, No, 1/26/73, 1/26/73, 1, 6e.[3]

Rural Electrification Administration: Loans—283,972, 456,103, Yes, 1/26/73, 1, 26/73, 2, 6b, 6c.

Salaries and expenses—16,611, 153, No, 1/26/73, 1/26/73, 6b.

Farmers Home Administration: Rural water and waste disposal grants—30,000, 120,-000, Yes, 1/26/73, 1/26/73, 6b, 6c.

Rural housing for domestic farm labor grants—850, 2,947, Yes, 1/26/73, 1/26/73, 5, 6b.

Mutual and self-help housing grants—3,729, 832, Yes, 9/22/73, 9/22/73, 4.

Salaries and expenses—117,914, 1,371, No, 1/26/73, 1/26/73, 6b.

Rural housing insurance fund—2,021,000, 133,000, Yes, 1/26/73, 1/26/73, 4, 6b.

Soil Conservation Service: Conservation operations—170,093, 3,607, Yes, 1/26/73, 1/26/73, 6b.

River basin surveys and investigation—14,344, 156, Yes, 1/26/73, 1/26/73, 6b.

Watershed planning—9,256, 569, Yes, 1/26/73, 1/26/73, 6b.

Watershed and flood prevention operations—140,287, 17, 412, Yes, 1/26/73, 1/26/73, 6b.

Great Plains conservation service—18,265, 74, Yes, 1/26/73, 1/26/73, 6b.

Resource conservation and development—25,371, 7,929, Yes, 1/26/73, 1/26/73, 6b.

Agricultural Marketing Service: Marketing service—37,151, 236, No, 9/22/72, 9/22/72, 6b, and 1,360, 700, Yes, 6/27/72, 7/1/72, 4.

Payments to States and possessions—1,600, 900, No, 9/22/72, 9/22/72, 6b.

Perishable agricultural commodities act fund—1,353, 10, Yes, 6/27/72, 7/1/72, 4.

Food Nutrition Service: Food stamp program—2,336,896, 158,854, No, 12/20/72, 12/20/72, 1,6e.[3]

Forest Service: Forest protection and utilization—390,919, 22,105, No, 1/26/73, 1/26/73, 6b, and 9,208, 615, Yes, 9/8/72, 9/8/72, 4.

Construction and land acquisition 43,401, 12,602, Yes, 1/26/73, 1/26/73, 6b.

Youth conservation corps—3,500, 2,097, Yes, 1/26/73, 1/26/73, 4.

Forest roads and trails and roads and trails for states—157,848, 280,380, Yes, 1/26/73, 1/26/73, 6b.

Assistance to States for tree planting—1,119, 15, Yes, 1/26/73, 1/26/73, 6b.

Brush disposal—18,328, 18,558, Yes, 11/14/72, 11/14/72, 4.

Forest fire prevention—261, 134, Yes, 11/14/72, 11/14/72, 4.

Department of Commerce, Social and Economic Statistics Administration: Salaries and expenses—33,787, 1,500, No, 11/24/72, 11/24/72. 2, 6b.

1974 Census of Agriculture— ——[4], 1,360, Yes, 11/24/72, 11/24/72, 2, 4.

Economic Development Administration: Planning, technical assistance, and research—29,000, 2,488, No, 1/18/73, 1/18/73, 2, 6b.

Development facilities—211,109, 8,891, No, 1/18/73, 1/18/73, 2, 6b.

Regional Action Planning Commissions: Regional development programs—44,553, 1,-116, Yes, 11/24/72, 1/24/72, 5.

Domestic and International Business: Trade adjustment assistance—21,000, 18,681, Yes, 1/4/73, 1/4/73, 1.

Spokane ecological exposition—2,689, 811, Yes, 11/24/72, 11/24/72, 4, 5.

International activities, Inter-American Cultural and Trade Center—100, 5,359, Yes, 9/29/72, 9/29/72, 4, 5.

Office of Minority Business: Minority business development—9,935, 1,188, No, 11/24/72, 11/24/72, 2, 6b, and 36,065, 16,786 Yes, 1/26/72, 1/26/72, 2, 4, 6b.

National Oceanic and Atmospheric Administration: Salaries and expenses—228,780, 12,323, No, 1/26/73, 1/26/73, 2, 6b.

Research, development, and facilities—121,481, 31,762, Yes, 1/26/73, 1/26/73, 2, 4, 6b.

Satellite operations—38,282, 1,000, Yes, 1/26/73, 1/26/73, 5.

Administration of the Pribilof Islands—3,-032, 200, No, 1/26/73, 1/26/73, 2, 6b.

Patent Office: Salaries and expenses—66,-353, 1,247, No, 1/26/73, 1/26/73, 2, 6b.

Office of Telecommunications: Research, analysis, and technical services—5,316, 1,435, Yes, 12/28/72, 12/28/72, 2, 4, 6b.

National Bureau of Standards: Plant facilities—2,450, 1,850, Yes, 11/24/72, 11/24/72, 2, 4, 6b.

Research and technical services—50,400, 7,895, No, 12/28/72, 12/28/72, 2, 6b, and 2,000 8,812, Yes, 11/24/72, 11/24/72, 5, 6b.

Construction of facilities—138, 740, Yes, 1/26/73, 1/26/73, 4, 6b.

Maritime Administration: Ship construction—421,810, 50,000, Yes, 1/18/73, 1/18/73, 4, 6b.

Research and development—24,901, 5,000, Yes, 1/18/73, 1/18/73, 4, 6b.

Salaries and expenses—25,010, 700, No, 11/24/72, 11/24/72, 2.

Maritime training—8,324, 150, No, 11/24/72, 11/24/72, 2.

State marine schools—2,428, 127, Yes, 11/24/72, 11/24/72, 4.

Department of Defense-Military, Personnel: Reserve personnel, Marine Corps—71,-950, 5,106, No, 11/17/72, 11/17/72, 5.

Procurement: Aircraft procurement, Army—53,049, 2,825, Yes, 11/20/72, 11/20/72, 4.

Other procurement, Army—146,583, 21,726, Yes, 11/20/72, 11/20/72, 4.

Shipbuilding and conversion, Navy—1,031,-900, 145,672, Yes, 11/24/72, 11/24/72 4; 938,-300, 427,212, Yes, 11/24/72, 11/24/72, 4, and 2,263,500, 777,100, Yes, 11/24/72, 11/24/72, 4.

Military Construction: Military construction, Army—1,199,739, 127,706, Yes, 11/24/72, 11/24/72 and 5.

Military construction, Navy—719,073, 127,-584, Yes, 1/8/73, 1/8/73, 5.

Military construction, Air Force—364,331, 123,924, Yes, 1/8/73, 1/8/73, 5.

Military construction, Defense agencies—24,580, 58,565, Yes, 1/10/73, 1/10/73, 5.

Military construction, Army National Guard—20,939, 25,327, Yes, 1/8/73, 1/8/73, 5.

Military construction, Air National Guard—11,805, 7,268, Yes, 1/15/73, 1/15/73, 5.

Military construction, Army Reserve—40,-163, 15,465, Yes, 1/8/73 1/8/73, 5.

Military construction, Naval Reserve—10,-731, 25,750, Yes, 11/24/73, 11/24/73, 5.

Military construction, Air Force Reserve—8,919, 988, Yes, 12/19/73, 12/19/72, 5.

Civil Defense: Research, shelter survey and marking—23,397, 1,080, Yes, 7/27/72, 7/27/72, 5.

Special Foreign Currency Program: Special foreign currency program—8,705, 2,426, No, 12/18/72, 12/18/72, 5; 7,025, 2,477, Yes, 12/18/72, 12/18/72, 5; and 3,000, 400, Yes, 12/4/72, 12/4/72, 5.

Department of Defense—Civil, Corps of Engineers: General investigations—58,992, 5,150, Yes, 1/26/73, 1/26/73, 2,6b; Construction—1,262,801, 94,033, Yes, 1/26/73, 1/26/73, 1,6b; Operation and maintenance—433,799, 16,000, Yes, 1/26/73, 1/26/73, 6b; Flood control, Mississippi River and tributaries—110,-798, 1,750, Yes, 1/26/73, 1/26/73, 6b.

Panama Canal: Canal Zone Government, Capital outlay—7,089, 700, Yes, 9/8/72, 9/8/72, 5.

Wildlife Conservation: Wildlife conservation, Army—515, 330, Yes, 12/13/73, 12/13/72, 1; Wildlife conservation, Navy—58, 30, Yes, 11/21/72, 11/21/72, 1; Wildlife conservation, Air Force—101, 31, Yes, 6/28/72, 7/1/72, 1.

Department of Health, Education and Welfare, Health Services and Mental Health Facilities: Indian health facilities—43,960, 4,623, Yes, 1/26/73, 1/26/73, 5.

National Institutes of Health: Buildings and facilities—14,843, 2,000, Yes, 8/15/72, 8/15/72, 5.

Office of Education: Higher education—234,359, 1,889, Yes, 11/30/72, 11/30/72, 5, and 355,200, 10,000, No, 1/26/73, 1/26/73, 5.

Educational activities overseas (Special foreign currency program), 3,282, 16, Yes, 4/6/72, 7/1/73, 5.

Social and Rehabilitation Service: Social and rehabilitation services, 31,767 200, No, 12/11/72, 12/11/72, 6b.

Social Security Administration: Limitation on construction (Trust fund)—33,860, 12,095, Yes, 4/27/72, 7/1/72, 4, 5.

Special Institution: Howard University—54,046, 3,714, Yes, 1/24/72, 7/1/72, 5.

Department of Housing and Urban Development, Housing Production and Mortgage Credit: Non-profit sponsor assistance—1,100, 6,686, Yes, 1/26/73, 1/26/73, 5, 6b, 6c,

Community Development: Open space land programs—50,000, 50,050, Yes, 1/26/73, 1/26/73, 6b, 6c.

Grants for basic water and sewer facilities—100,000, 400,175, Yes, 1/26/73, 1/26/73, 6b, 6c.

Rehabilitation loan fund—71,539, 50,000, Yes, 1/26/73, 1/26/73, 6b, 6c.

Public facility loans—42,896, 20,000, Yes, 1/26/73, 1/26/73, 6b, 6c.

Office of Interstate Land Sales Registration: Interstate land sales— ——[5], 2,341, yes, 1/26/73, 1/26/73, 4.

Department of the Interior: Bureau of Land Management: Public lands development roads and trails, 4,363, 12,961, Yes, 9/8/72, 9/8/72, 6d.

Bureau of Indian Affairs: Construction, 45,377, 31,467, Yes, 1/26/73, 1/26/73, 6b.

Bureau of Outdoor Recreation: Land and water conservation, 312,223, 269,590, Yes, 1/26/73, 1/26/73, 6b.

Territorial Affairs: Trust Territories of the Pacific Islands, 63,903, 10,000, Yes, 1/26/73, 1/26/73, 6b.

Geological Survey: Surveys, investigations, and research, 190,205, 3,000, No, 1/12/73, 1/12/73, 6b.

Payments from proceeds, sale of water, Mineral Leasing Act of 1920, ——[6], 24, Yes, 9/8/72, 9/8/72, 4, 5.

Bureau of Mines: Drainage of Anthracite mines, 200, 3,700, Yes, 6/27/72, 7/1/72, 4, 5.

Bureau of Sport Fisheries and Wildlife: Migratory bird conservation, receipt limitation, 12,249, 2,981, Yes, 1/26/73, 1/26/73, 6b.

Federal aid in wildlife restoration—43,400, 7,053, Yes, 5/16/72, 7/1/72, 4, 5.

National wildlife refuse fund—4,603, 4,123, Yes, 11/16/72, 11/16/72, 4, 5.

Federal aid in fish restoration and management—16,200, 3,234, Yes, 5/16/72, 7/1/72, 4, 5.

National Park Service: Parkway and road construction—39,500, 50,949, Yes, 6/27/72, 7/1/72, 6b, 6d.

Construction—67,652, 39,499, Yes, 1/26/73, 1/26/73, 6b.

Bureau of Reclamation: General investigations, 22,790, 1,850, Yes, 1/26/73, 1/26/73, 6b.

Loan program—19,894, 930, Yes, 1/26/73, 1/26/73, 6b.

Construction and rehabilitation—261,404, 18,025, Yes, 1/26/73, 1/26/73, 5, 6b.

Operations, maintenance and replacement of project works, North Platte project[7]—97, Yes, 9/22/72, 9/22/72, 6e[8].

Lower Colorado River Basin development fund—26,515, 3,000, Yes, 1/26/73, 1/26/73, 6b.

Upper Colorado River Basin fund—60,090, 10,450, Yes, 1/26/73, 1/26/73, 5, 6b.

Office of Water Resources Research: Salaries and expenses—14,304, 2,040, No, 1/26/73, 1/26/73, 6b.

Office of the Secretary: Saline water research—22,400, 6,675, Yes, 1/26/73, 1/26/73, 6b.

Department of Justice: Bureau of Prisons:

Footnotes at end of article.

Buildings and facilities—65,514, 36,441, Yes, 1/26/73, 1/26/73, 5, 6b.

Department of State: Administration of Foreign Affairs: Acquisition, operation, and maintenance of buildings abroad—42,122, 2,125, Yes, 11/24/72, 11/24/72, 4.

Acquisition, operation, and maintenance of buildings abroad, Special foreign currency program—5,713, 2,950, Yes, 1/3/73, 1/3/73, 5.

International Organizations and Conferences: International conferences and contingencies—3,224, 325, Yes, 11/15/72, 11/15/72, 4.

Educational Exchange: Center for Cultural and Technical Interchange between East and West—6,000, 200, No, 11/22/72, 11/22/72, 5.

Educational exchange fund, payment by Finland WWI debt—377, 25, Yes, 11/15/72, 11/15/72, 4.

Department of Transportation: Office of the Secretary: Transportation planning, research, and development—31,163, 8,300, Yes, 1/18/73, 1/18/73, 4, 6b.

Coast Guard: Operating expenses—550,400, 10,500, No, 1/18/73, 1/18/73, 2, 6b.

Acquisition, construction and improvements—149,685, 11,736, Yes, 1/18/73, 1/18/73, 4, 6b.

Reserve training—30,465, 1,270, No, 1/18/73, 1/18/73, 2, 6b.

Research, development test and evaluation—15,468, 3,000, Yes, 1/18/73, 1/18/73, 4, 6b.

Alteration of bridges—3,550, 10,550, Yes, 1/18/73, 1/18/73, 4 6b.

Federal Aviation Administration: Operations—1,180,393, 6,000, No, 1/18/73, 1/18/73, 2, 6b, and 4,000, Yes, 4, 6b.

Facilities and equipment (Airport and Airway Trust)—319,962, 207,631, Yes, 1/18/73, 1/18/73, 4, 6b.

Research, engineering, and development (Airport and Airway Trust)—57,493, 10,000, Yes, 1/18/73, 1/18/73, 4, 6b.

Civil supersonic aircraft development—800, 2,153, Yes, 1/18/73, 1/18/73, 4, 6b.

Civil supersonic aircraft development termination—4,161, 3,575, Yes, 1/23/73, 1/23/73, 4, 6b.

Federal Highway Administration: Darien Gap highway—20,000, 545, Yes, 1/18/73, 1/18/73, 4, 5.

Federal-aid highway—4,467,000, 2,477,372, Yes, 1/8/73, 1/8/73, 6c.

Right-of-Way Revolving Fund—50,000, 122,782, Yes, 1/18/73, 1/18/73, 4.

National Highway Traffic Administration: Traffic and highway safety—76,885, 2,927, No, 1/19/73, 1/19/73, 1.

Construction of compliance facilities: ——,[9] 9,018, Yes, 1/19/73, 1/19/73, 4, 5.

Trust fund share of highway safety programs—80,925, 1,073, No, 1/19/73, 1/19/73, 1, 5.

Federal Railroad Administration: High speed ground transportation research and development—42,979, 15,000, Yes, 1/19/73, 1/19/73, 4, 6b.

Grants to National Railroad Passenger Corporation—103,100, 10,000, Yes, 1/19/73, 1/19/73, 4, 6b.

Urban Mass Transportation Administration: Urban mass transportation fund—980,000, 20,000, Yes, 1/17/73, 1/17/73, 4, 6b.

Department of the Treasury: Office of the Secretary: Construction, Federal Law Enforcement Training Center—1,840, 21,517, Yes, 6/28/72, 7/1/72, 5, 6b.

Expenses of administration of settlement of War Claims Act of 1928—22, 2, Yes, 4/30/72, 7/1/72, 2.

Bureau of the Mint: Construction of mint facilities—1,784, 2,517, Yes, 8/21/72, 8/21/72, 5.

Atomic Energy Commission: Operating expenses—2,861,569, 307,750, Yes, 1/19/73, 1/19/73, 2, 5, 6b.

Plant and capital equipment—542,871, 8,530, Yes, 1/19/73, 1/19/73, 2, 5.

Environmental Protection Agency: Operations, research, and facilities—108,434, 1,780, Yes, 1/4/73, 1/4/73, 5.

General Services Administration: Real Property Activities: Sites and expenses, Public buildings projects—38,387, 22,206, Yes, 1/26/73, 1/26/73, 4.

Construction Public buildings projects—133,213, 234,309, Yes, 1/26/73, 1/26/73, 2, 4.

Property Management and Disposal Activities: Operating expenses—4,418, 4,000, Yes, 11/30/72, 11/30/72, 4.

General activities—1,000, 800, No, 11/30/72, 11/30/72, 1.

National Aeronautics and Space Administration: Research and development—2,864,358, 32,515, Yes, 9/13/72, 9/13/72, 2, 4, 5, 6b.

Veterans Administration: Medical and prosthetic research—75,824, 4,818, Yes, 1/26/73, 1/26/73, 5.

Medical administration and miscellaneous operating expenses—27,952, 837, No, 1/26/73, 1/26/73, 1.

Construction, major projects—65,993, 60,000, Yes, 12/20/78, 12/20/72, 5.

Construction, minor projects—50,000, 5,000, Yes, 12/20/72, 12/20/72, 5.

Other Independent Agencies: District of Columbia: Capital outlay, metropolitan area sanitary area work funds—6,252. 300, Yes, 8/7/72, 8/7/72, 4.

Loans for capital outlay, sanitary sewage—28,000, 4,285, Yes, 8/7/72, 8/7/72, 4.

Loans for capital outlay; water fund—8,433, 2,360, Yes, 8/7/72, 8/7/72, 4.

Loans for capital outlay, general fund—137,000, 6,758, Yes, 1/26/73, 1/26/73, 4.

Federal Communications Commission: Salaries and expenses—35,443, 460, No. 9/5/72, 9/5/72, 5.

Federal Metal and Non/metallic Safety Board of Review: Salaries and expenses—75, 85, No, 9/8/72, 9/8/72, 1.

Federal Trade Commission: Salaries and expenses—29,874, 400, No, 9/21/72, 9/21/72, 5.

Foreign Claims Settlement Commission: Salaries and expenses—693, 50, No. 11/14/72, 11/14/72, 1.

Payments to Vietnam and U.S.S. Pueblo prisoner of war claims—23, 150, Yes, 9/2/71, 7/1/72, 1.

American Revolution Bicentennial Commission: Commemorative activities fund—3,960, 5,690, Yes, 11/28/72, 11/28/72, 5.

International Radio Broadcasting: International radio broadcasting activities—38,520, 275, No. 11/6/72, 11/6/72, 2, 6e[10].

National Science Foundation: Salaries and expenses—611,273, 60,400, Yes, 1/18/73, 1/18/73, 2,5,6b.

Scientific activities, Special foreign currency program—5,000, 2,000, Yes, 1/18,/73, 1/18/73, 2.

Railroad Retirement Board: Limitation on railroad unemployment administration fund, 8,568, 4,820, Yes, 7/1/72, 7/1/72, 6e.[11]

Renegotiation Board: Salaries and expenses, 4,842, 45, No, 9/5/72, 9/5/72, 5.

Small Business Administration: Salaries and expenses—107,232, 3,217, No, 11/24/72, 11/24/72, 1, 2, 6b.

Business loan and investment fund, 593,678, 48,017, Yes, 1/26/73, 1/26/73, 2,4,6b.

Temporary Study Commission: Commission on Executive, Legislative, and Judicial Salaries, Salaries and expenses, 25, 75, No, 1/11/73, 1/11/73, 5.

Commission on the Organization of the Government for the Conduct of Foreign Policy, Salaries and expenses: ——[12], 200, No, 11/30/72, 11/30/72, 5.

Tennessee Valley Authority: Payment to Tennessee Valley Authority Fund, 94,564, 22,318, Yes, 1/26/73, 1/26/73, 6a,6b,6c.

United States Information Agency: Salaries and expenses, Special foreign currency program, 12,186, 2,533, Yes, 11/22/72, 11/22/72, 4.

Special international exhibits, 5,827, 667, Yes, 11/22/72, 11/22/72, 4.

Special international exhibits, Special foreign currency program—391, 6, Yes, 11/22/72, 11/11/72, 4.

Water Resources Council: Water resources planning—6,486, 863, Yes, 1/26/73, 2, 5, 6b.

FOOTNOTES

[1] Funds have not been apportioned while awaiting the completion of negotiations with the Government of Israel.

[2] P.L. 92-571, "Making further continuing appropriations for fiscal year 1973, and for other purposes," includes a limitation on obligations of $5 million. The reserve will remain in effect until Congress completes final action on its annual limitation on the Foundation's activities.

[3] P.L. 92-399, "Agriculture-Environmental and Consumer Protection Appropriation Act, 1973" requires the creation of certain reserves pending such circumstances as the provision of matching funds by the States, the determination of qualified and necessary projects, the determination of the availability of qualified personnel, and the determination of need.

[4] The Census of Agriculture has been postponed until 1977 to coincide with the economic censuses.

[5] Fees deposited to the Interstate land sales account are used only to the extent funds are not sufficient in the appropriation for Salaries and expenses, Housing Production and Mortgage Credit Programs.

[6] The Department of the Interior has no present plans for the use of these funds which are available only for the development of water wells on public lands.

[7] No improvements are currently necessary. (See footnote 8).

[8] 66 Stat. 754 requires that certain miscellaneous revenues be deposited in a special fund to provide for the replacement of the project works and to defray annual operating and maintenance expenses when necessary.

[9] Construction is deferred pending evaluation of the alternatives of lease versus direct construction.

[10] P.L. 92-544, "Department of State Appropriation Act, 1973" provides these funds for the activities of a commission. However, P.L. 92-394, "United States Information and Educational Exchange Act of 1948, Amended" authorizes funds in this account to be spent only on grants.

[11] 45 U.S.C. 361 authorizes the Railroad Retirement Board to use funds from the Unemployment Trust Fund of 0.25% of the taxable payroll of railroad workers for the administrative expenses of operating the railroad unemployment insurance fund. The amount apportioned represents the actual operating requirements. If the remainder of this formula-based authorization (currently in reserve) is not needed, it will be returned to the Unemployment Trust Fund.

[12] The Commission is not yet in operation.

Summary of budgetary reserves, as of January 29, 1973

[Dollars in millions]

Agency:	Amount
Executive Office of the President	3
Funds appropriated to the President	127
Department of Agriculture	1,497
Department of Commerce	181
Department of Defense—Military	1,899
Department of Defense—Civil	118
Department of Health, Education, and Welfare	35
Department of Housing and Urban Development	529
Department of the Interior	482
Department of Justice	36
Department of State	6
Department of Transportation	2,937
Department of Treasury	24
Atomic Energy Commission	316
Environmental Protection Agency	2
General Services Administration	261
National Aeronautics and Space Administration	33

Summary of budgetary reserves, as of January 29, 1973—Continued

Agency:	Amount
Veterans Administration	71
Other Independent Agencies:	
National Science Foundation	62
Small Business Administration	51
All other	52
Total	8,723

Mr. GRIFFIN. Mr. President, as the distinguished Senator from Maryland (Mr. BEALL) has appropriately pointed out, much of the blame, if not all of the blame for the fact that some appropriated funds have been impounded must be laid at the doorstep of Congress itself. For it is the Congress which has not equipped itself, has not staffed itself, and has not adequately performed its functions related to the budget and fiscal affairs.

Indeed I would say that the Nation owes President Nixon a real debt of gratitude for performing the functions which Congress failed to perform.

Mr. President, I know there are those—and I am one of them—who disagree with the President concerning the impoundment of funds for particular items or programs. However, who can really argue with his overall objective of holding spending in this fiscal year to the level of $250 billion.

Mr. President, I wish to expand on that statement by pointing out that the report filed today contains some very interesting information. Many people might assume from reading the newspapers that this particular President is exercising a power which no other President before him has ever exercised. And certainly the impression is left that President Nixon is exercising the impoundment to a greater degree than other Presidents.

But as the report indicates on the last page thereof, the President in this fiscal year has impounded funds, set aside reserves, totalling $8.7 billion.

As the report reflects:

The total of all current reserves is 3.5% of the total unified budget outlays for fiscal year 1973 (as estimated in the 1974 Budget). The comparable percentage at the end of fiscal years 1959 through 1961 ranged from 7.5% to 8.7%. At the end of fiscal year 1967, it stood at 6.7%. At the end of 1972, it was 4.6%. But a range in the neighborhood of 6% has been normal over most of the last decade.

Mr. President, when 6 percent represents a normal percentage of impounded funds for any year during the past decade, that provides a very interesting comparison with the current impoundment of 3.5 percent by this President.

Furthermore, I think it needs to be restated that Presidents since Thomas Jefferson have refused to spend all the money that Congress has appropriated. As I understand, President Jefferson withheld and refused to spend some $50,000 that was appropriated for a gunboat to operate on the Mississippi River. President Jefferson concluded that our relations with the Indians had improved to such an extent that it was not necessary to spend the money.

It is interesting, and ought to be noted in the RECORD, that during the administration of President Lyndon Johnson, his Attorney General, Mr. Ramsey Clark, sought to justify the impoundment of funds by President Johnson with this explanation:

The courts have recognized that appropriation acts are of a fiscal and permissive nature and do not in themselves impose upon the executive branch an affirmative duty to expend funds. . . .

Congress, of course, is fully aware of the rule that an appropriation act in itself does not constitute a mandate to spend. . . .

An appropriation act thus places an upper and not a lower limit on exenditures.

Mr. President, in 1969 the distinguished chairman of the Appropriations Committee of the House of Representatives, Mr. MAHON, said this:

The weight of experience and practice bears out the general proposition that an appropriation does not constitute a mandate to spend every dollar appropriated. That is a generally accepted concept. It squares with the rule of common sense. I subscribe fully to it. The Congress does not administer the government. . . . I believe it is fundamentally desirable that the Executive have limited powers of impoundment in the interests of good management and constructive economy in public expenditures.

Mr. President, in 1943 former Senator Harry Truman made this observation in this body:

When the Congress appropriates funds it gives the Executive Branch an authority to incur obligations. Certainly none of us hold that we give a mandate to expend the funds appropriated. We expect the funds to be used only where needed, and not in excess of the amount appropriated to carry out some phase of the law.

Mr. President, why did President Nixon seek, through impoundment of funds, to hold the spending level for the current fiscal year to $250 billion? I suggest and submit that he did it for several reasons. First, I believe most knowledgeable economists would not argue vigorously against the proposition that spending by the Federal Government substantially in excess of $250 billion during this fiscal year would have generated serious inflationary pressures.

Mr. President, except for any who choose to believe that taxes and prices should be even higher, the President performed an important service by exercising sound economic judgment. But, beyond that, let me make the further point that he was also carrying out the intent of Congress. The debt ceiling in effect, is the work and the act of Congress.

As I understand it, the debt ceiling now in effect is predicated on an assumption that Federal spending in this fiscal year will be held to $250 billion.

Furthermore, while a spending limitation bill did not become law in the last session, it should be recalled that each House of Congress did pass legislation. And while different in other respects, both bills recognized the principle that spending for this fiscal year should not exceed $250 billion.

Accordingly I think it is reasonable to suggest that by holding spending to a level of $250 billion, the President was actually carrying out—not thwarting—the will of Congress.

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator from Michigan yield?

Mr. GRIFFIN. If I may make this one further point: There was one easy way that Congress could have retained control of the allocations and priorities. That would have been for Congress to have appropriated no more than $250 billion for the current fiscal year. But since Congress appropriated more than that amount, it seems to me that we are not in a good position now to quibble and quarrel with the President, because he exercised a function that must be exercised if the Government is not to go bankrupt.

Now I yield to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. Although this is not involved directly in the question of impoundment of funds, I wonder if the Senator from Michigan would comment on this observation: It seems to me that the real power of the purse which Congress has is the power to appropriate, the power not to make tax funds available.

Mr. GRIFFIN. I agree.

Mr. HARRY F. BYRD, JR. But that once Congress takes the step of making tax funds available, namely, by appropriating funds——

The ACTING PRESIDENT pro tempore. The Senator's 3 minutes have expired.

Mr. HARRY F. BYRD, JR. Mr. President, I seek recognition.

The ACTING PRESIDENT pro tempore. The Senator from Virginia is recognized for 3 minutes.

Mr. HARRY F. BYRD, JR. But once Congress makes tax funds available, once it appropriates moneys, then the administration of the distribution of those funds falls into the hands of the Chief Executive. Is that about the way the Senator from Michigan understands it?

Mr. GRIFFIN. That is the way I see it, yes.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. GRIFFIN. In addition to the point made by the Senator from Virginia, I would point out that no President, obviously, can spend more money than Congress sees fit to appropriate. Congress does have a clear and real power to limit spending by refusing to appropriate. But when we appropriate a total amount of money that is not consistent with other limitations and policies which the Congress itself has imposed, such as a debt ceiling—then we should not be disappointed—indeed we should be pleased when the President makes the hard priority decisions that Congress has failed to make.

So I believe I am justified today, particularly in the light of the report filed today, which ought to be carefully read by those who have been so critical of the President. He has performed a valuable service to the country and we ought to be applauding him rather than making him the target of such criticism and vilification.

It is up to Congress now. If Congress really wants to share in the responsibility which the President was forced to assume for this fiscal year, we ought to get about the business of equipping and staffing the

Congress so we can perform that function.

Mr. HARRY F. BYRD, JR. The Senator from Michigan feels, I assume, as does the Senator from Virginia, that Congress should put a ceiling on expenditures?

Mr. GRIFFIN. I think it would be a very wise and appropriate thing to do.

By Mr. GOLDWATER:

S. 759. A bill to help relieve the burden of high property taxes by allowing each homeowner a credit against his Federal income tax for property taxes paid for the support of public schools. Referred to the Committee on Finance.

A TAX CREDIT FOR PUBLIC SCHOOL EDUCATION

Mr. GOLDWATER. Mr. President, courts in at least five States have ruled the property tax system of financing public school education to be unconstitutional. And yet property taxes are at an all time high, increasing at an average annual rate of 9 percent. In fact, many older persons on fixed incomes find that it takes four or five social security checks just to pay the taxes on their homes. They will be forced to sell their houses unless they receive some relief. Today I am introducing a bill which will do just that.

Mr. President, the legislation is simple. It would create a tax credit of $150 for each homeowner who pays a tax on his residential property, whether it is paid to his local government, to a school district, or to a State. In other words, every taxpayer who pays a school tax on his residence, by whatever name, shall be permitted to subtract from his Federal income tax bill the full amount of his school tax up to $150. In the alternative an elderly person age 62 or older, living on a low income, can file for a rebate of all property taxes above 5 percent of his total income up to a maximum of $150.

Mr. President, let me emphasize that this is in addition to the existing Federal deduction which is now granted on account of State and local school taxes. The deduction helps and it should be continued. But by permitting each homeowner to also obtain a $150 credit or rebate of his real estate tax the bill will aim a tax savings directly at low- and average-income persons. They can enjoy the full benefit of a tax credit, or rebate, but not of a tax deduction, which provides its greatest savings only to persons with the highest incomes.

Mr. President, I am certain every homeowner is aware his local or State property tax is still the major source of financing for public education. It provides over 50 percent of the funds spent annually on public school support, while only 10 percent comes from the highly touted Federal aid to education.

The property tax is so burdensome that a recent staff study of the Advisory Committee on Intergovernmental Relations concluded it constitutes "a national scandal" for many elderly homeowners. On an individual basis, almost one-third of the Nation's homeowners pay out more than 6 percent of their income in property taxes, which is bad enough. But the Nation's 6 million elderly homeowners pay even more, an average of 8.1 percent of their income in property taxes. Over one million of these aged persons pay 15.8 percent and in some regions of the country almost 30 percent of their income in property taxes.

Mr. President, this tax is paid for by the typical American who is already hard pressed to meet the combined burden of Federal, State, and local income and sales taxes, on top of taxes on the electricity, gas, telephones, and other basic necessities of life which he must pay. These taxes hit especially hard at retired persons who in their older age are living on fixed small incomes, but they are also severely felt by the vast majority of salaried taxpayers who are unable to take advantage of special business tax breaks and who are without a wide range of expense deductions.

Property is no longer an index of a man's wealth. The take from the property tax now hits individuals of the lowest income brackets. In the most recent year for which statistics are available, the 1968 tax year, 23.7 million taxpayers took a deduction on their Federal income tax returns on account of real estate property tax payments. Almost 3 million, or 12 percent of these taxpayers had adjusted gross incomes of less than $5,000. The greatest number of taxpayers using the real property deduction was in the range of $5,000 to $10,000 income. There were 8.5 million of these taxpayers. Another 7.4 million taxpayers earned between $10,000 to $15,000 of adjusted gross income. In all, 48 percent of the taxpayers who showed real estate tax deductions had an annual income below $10,000 and 79 percent of these taxpayers reported incomes of less than $15,000.

On these facts, it can be seen that the enactment of a property tax credit such as I am introducing would not be a boon to the wealthy, but would be of real help to the average citizen.

In addition, Mr. President, my bill will recognize mobile home residents as first-class citizens. It is high time that we in Government realized that over 8 million Americans are now living year around in mobile homes and that half of all the single-family homes being built in the United States today are mobile homes. In 1972 alone, 600,000 new mobile homes were manufactured.

In my own State of Arizona, there were over 20,000 mobile homes shipped to dealers in 1972, a 27-percent boost over a year earlier. This translates into 40,000 newly established families in Arizona in 1971 and 1972, many of whom are younger persons, such as college students and returning veterans, as well as retired citizens.

Accordingly, I have provided in the bill I am introducing today that taxpayers who own and use mobile homes as their residence shall be entitled to the same tax credit as the one given to the owners of conventional homes. By whatever name these taxes are called, personal property, license fees, or you name it, my bill will treat them as a tax qualified for credit up to $150, if they help to finance public education.

Mr. President, before I conclude, I wish to make one observation about the recent decisions by State and Federal courts in California, Minnesota, Texas, New Jersey, and Arizona holding the school financing systems unconstitutional. These cases do not mean that the property tax will end. The local property tax itself could remain a powerful source of school revenues under any new school financing plan so long as the method chosen to distribute its revenues eliminates the discrimination among different school districts in the State. Also, it appears likely that a statewide real property tax will be substituted for the locally raised tax in some places.

In other words, it is far too early to predict the demise of either local or State real property taxes. If the grand day should enter upon us when some State financial wizards discover a way of meeting the operating expenses of public school systems without relying on property taxation at all, then the tax credit I am urging today can be eliminated. But until that bright day dawns on the horizon, I think homeowners who are still paying their tax bills each year will find it a little easier to make their way with a tax credit to help them along.

By Mr. HATFIELD (for himself and Mr. PACKWOOD):

S. 761. A bill to amend the act terminating Federal supervision over the Klamath Indian Tribe by providing for Federal acquisition of that part of the tribal lands described herein, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. HATFIELD. Mr. President, I rise today to introduce legislation to authorize and direct the Secretary of Agriculture to purchase the Klamath Indian forest lands.

This legislation is identical in purpose to legislation which I introduced in the last session of Congress. The measure passed the Congress as an amendment to H.R. 56, the National Environmental Data System and State Environmental Centers Act of 1972, but this legislation was vetoed by the President.

The President pointed out in his veto message, however, that his objections were centered upon the titles which would establish the national environmental data system. He noted in his message that he would support acquisition of the Klamath Indian forest lands.

I welcome this support. The Klamath Indian lands consist of approximately 135,000 acres of beautiful forest lands, surrounded by the Winema National Forest, in Klamath County, Oreg. If the land is not purchased by the Government and managed under the multiple use-sustained yield concept, it will most likely be purchased by private firms, which would be forced by economic necessity to liquidate a large portion of the timber on the lands. In my view, and in the view of most Oregonians, this would be a tragic error. The Nation can best be served by managing the lands in a manner which guarantees that the Klamath Indian forest will provide a continuous source of timber for housing, recreation, wildlife protection, watershed protection, soil conservation, and the many

other benefits which forests provide. This forest will also provide a stable source of jobs for Klamath County.

Mr. President, the Oregon congressional delegation is unanimous in its support for the purchase of these unique Klamath Indian forest lands. Senator PACKWOOD is joining me today in introducing this legislation and an identical bill is being introduced in the House by the Oregon Members.

I am hopeful that the Congress will move expeditiously to enact this legislation to insure the proper management of this area.

Mr. President, I ask unanimous consent that the President's veto message on H.R. 56, which explains his support of this land purchase, be printed in the RECORD, along with an excerpt from the Senate Interior Committee report on the legislation approved last year, and the legislation Senator PACKWOOD and I are introducing today.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE WHITE HOUSE—MEMORANDUM OF DISAPPROVAL

I am withholding my approval from H.R. 56.

My objections to this bill are centered upon two of its titles which would establish a National Environmental Data System and create environmental centers in each State. While both of these titles sound desirable in theory, they would in reality lead to the duplication of information or would produce results unrelated to real needs and wasteful of talent, resources, and the taxpayers' money.

A third portion of H.R. 56 would direct the Federal Government to purchase the Klamath Indian Forest lands in Oregon. After studying this proposal carefully, I believe this purchase would be sound public policy, and if the next Congress provides the necessary funds, I shall happily approve the acquisition of these unique lands.

In the form now before me, Title I of this legislation calls for the establishment of an independent, centralized environmental data system for the acquisition, storage and dissemination of information relating to the environment. Data for the system would come from governmental, international and private sources. A Director, who would be under the guidance of the Council on Environmental Quality, would determine what data would actually be placed in the system and who would have access to the data.

I believe there are serious drawbacks to such a data system which would outweigh potential benefits. The collection of data and statistics on the supposition that some day they may be useful is in itself a highly dubious exercise. Data, taken out of the context of the questions they were specifically designed to answer can even contribute to confusion or be misleading.

With this in mind, I believe the centralized collection of environmental data should be related to specific policies and programs. H.R. 56 fails to provide such a relationship and the question of whether this basic deficiency can be overcome, and a useful centralized system designed, is now under study by the Administration. In the meantime, the Environmental Protection Agency and other agencies have consistently worked to strengthen the acquisition and exchange of such data and this effort will continue.

Title II of this legislation authorizes the establishment of environmental centers in every State to conduct research in pollution, natural resources management, and other local, State or regional problems. The centers would also train environmental professionals and carry out a comprehensive education program.

Research is a vital part of our effort to come to grips with the environmental problems we face. This Administration is currently spending literally hundreds of millions of dollars through directed research efforts sponsored by the Environmental Protection Agency, the Department of the Interior, the National Oceanic and Atmospheric Administration, the Department of Agriculture, and the Department of Health, Education and Welfare—to name but a few. We will continue these programs and institute others where they are needed.

Academic talent and resources have a vital role to play in the success of our environmental research programs. As members of the academic community know, grants for research are awarded on the basis of not only the merits of the project, but also the capabilities of the institution to carry out its responsibilities. By creating research centers on a rigid State-by-State basis, and requiring that each be funded, the Congress is asking us to throw away our priorities and to fund programs regardless of their merits and in spite of the limited capabilities of some institutions. Equally important, this approach also ignores the competence and available capacity of already existing institutions and laboratories to carry out this vital research.

Further, I share the view of the Administrator of the Environmental Protection Agency that environmental problems are essentialy national in scope, and that most problems, even though they may appear to be local in nature, really affect many other States and localities as well. To the extent there may be local problems, our present project-by-project approach in research can be used to marshal the best scientific talents, wherever they are located, to deal with such problems. Thus, there is clearly no justification for establishing up to 51 new environmental centers specifically charged with investigation of State and local environmental problems.

Titles III and IV of the bill direct the Secretary of Agriculture to purchase a tract of 113,000 acres in the Klamath Indian Forest in Oregon. I believe that acquisition of this forest area would mark a significant and worthwhile addition to our National Forest System while, at the same time, assuring full environmental protection to this scenic part of Oregon.

RICHARD NIXON.

THE WHITE HOUSE, *October 21, 1972.*

REPORT

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 3594) providing for Federal purchase of the remaining Klamath Indian Forest, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

S. 3594, introduced by Senator Hatfield with Senator Packwood as cosponsor, would authorize the Secretary of Agriculture to purchase the Klamath Indian Forest lands for $51,954,709, prior to June 30, 1972. Under the provisions of the Klamath Termination Act, as amended, the U.S. National Bank of Oregon, trustee for the tribe, made an offer to the Secretary of Agriculture on July 2, 1971, to purchase the remaining lands for $51,369,731. The Secretary of Agriculture has until July 1, 1972, to either accept or reject the offer. If the offer is not accepted, an offer will be made to private interests.

Fears have been expressed that private firms will buy up this extremely scenic forest and through high-intensity logging and home-site development, instead of multiple-use and sustained-yield management, destroy its great resource value. Some of the forest lies along picturesque rivers and has been described by observers as unusually beautiful. Purchase by the Federal Government would guarantee not only that these lands continue to produce forest products and provide jobs on a sustained-yield basis for future generations, but also that recreational and other multiple-use values will be adequately protected. Managed as part of the Winema National Forest, the land would be able to meet its full productive potential for satisfying the Nation's long-term timber needs, as well as providing many other public uses of this great resource.

DESCRIPTION

The Klamath Indian Forest is located in Klamath County, Oreg., and is surrounded by Winema National Forest lands. The tract approximates 135,000 acres, of which 133,300 acres consist of timbered land, 1,100 acres of grassland, and 600 acres of other types of land. There are approximately 900 million board feet of merchantable sawtimber on the tract, primarily of ponderosa pine. The tract can produce about 4,000 animal unit months of forage for range cattle and sheep. It contains 9½ miles of frontage on the Williamson River and provides a summer range for three major herds of mule deer.

RECOMMENDATION

The Senate Committee on Interior and Insular Affairs unanimously reports favorably on S. 3594 and recommends early enactment.

DEPARTMENTAL REPORTS

The Department of Interior and the Department of Agriculture reports are set forth in full, as follows:

"U.S. DEPARTMENT OF THE INTERIOR,
"OFFICE OF THE SECRETARY,
"Washington, D.C., June 15, 1972.

"Hon. HENRY M. JACKSON,
"Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

"DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on S. 3594, a bill providing for Federal purchase of the remaining Klamath Indian Forest.

"We defer to the views of the Department of Agriculture as to whether this bill should be enacted.

"S. 3594 directs the Secretary of Agriculture to enter into a contract, prior to June 30, 1972, to purchase Klamath Indian Forest lands that were retained by the tribe and that were offered for sale pursuant to subsection 28(e) of the Klamath Termination Act of August 13, 1954, as amended (25 U.S.C. 564 W–1). The purchase price, which is set at $51,294,709, could be paid in installments, with interest on unmatured installments at a rate that does not exceed the cost to the United States of borrowing money under similar circumstances, as determined by the Secretary of the Treasury.

"The Klamath Termination Act of 1954 ended Federal supervision over the trust and restricted property of the Klamath Tribe of Indians and of its members, and terminated Federal services furnished such Indians because of their status as Indians. It provided for sale of some of the timber resources and disposition of the forest land retained by the tribe, including a requirement of first offer to the Secretary of Agriculture if the land was offered for sale to other than tribal members.

"We understand that the Klamath Indian Forest lands have been offered for sale by the trustee for the Indians, with the Secretary of Agriculture having the first right of refusal. We have no direct interest in the matter, however, as neither the land nor its owners are under the jurisdiction of this

Department. Accordingly, we defer to the views of the Department of Agriculture on this bill.

"The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

"Sincerely yours,

"HARRISON LOESCH,
"Assistant Secretary of the Interior."

"DEPARTMENT OF AGRICULTURE,
"OFFICE OF THE SECRETARY,
"Washington, D.C., June 16, 1972.

"Hon. HENRY M. JACKSON,
"Chairman, Committee on Interior and Insular Affairs, U.S. Senate, Washington, D.C.

"DEAR MR. CHAIRMAN: As you requested, here is our report on S. 3594, a bill providing for Federal purchase of the remaining Klamath Indian Forest.

"S. 3594 would direct the Secretary of Agriculture to enter into a contract, prior to June 30, 1972, to purchase for $51,954,709 the Klamath Indian Forest lands retained by the tribe and offered for sale pursuant to section 28(e) of the Klamath Indian Termination Act of August 13, 1954, as amended (25 U.S.C. 564 W–1).

"The Klamath Termination Act provided for termination of the Klamath Indian Reservation. The act further provides, in part, for disposal procedures, partition, disposal, and trust arrangement for the remaining Indians. The original disposal action resulted in the sale to the Secretary of Agriculture of tribal lands which became the Winema National Forest. This original sale included 525,680 acres which were purchased for $68,716,691 in 1959.

"An offer to sell the remaining lands for $51,369,731 was made to the Secretary of Agriculture on July 2, 1971, by the U.S. National Bank of Oregon, trustee for the tribe, under the provisions of the Klamath Termination Act, as amended. The act provides that after offering the lands to members of the tribe, the trust must next offer the lands to the Secretary of Agriculture who is given 12 months to either accept or reject the offer. If not accepted, the offer is then made to private interests. The Secretary's 12-month option ends July 1, 1972.

"The Klamath Indian Forest is located in Klamath County, Oreg., and is surrounded by Winema National Forest lands. The tract is composed of 133,300 acres of timbered land, 1,100 acres of grassland, and 600 acres of other types of land. There are approximately 900 million board feet of merchantable sawtimber on the tract, made up primarily of ponderosa pine. It can produce about 4,000 animal unit months of forage for range cattle and sheep. The tract contains 9½ miles of frontage on the Williamson River and is summer range for three major herds of mule deer.

"Based on extensive evaluation of the Klamath Indian Forest proposal and in view of the present fiscal situation, we do not favor acceptance of the current offer and recommend that S. 3594 not be enacted.

"We believe that there are alternative means available for dealing with the environmental concerns for the land other than by Federal purchase. The State of Oregon and its citizenry are active, interested, and concerned with the conservation and have an active authority to provide land use controls for environmental protection of the land.

"The Federal Government already owns 32.2 million acres in the State of Oregon (52.2 percent of the State), including 15.5 million acres of land administered by the Bureau of Land Management of the Department of the Interior. There appears to be no compelling national interest in adding another 135,000 acres to Federal ownership in Oregon.

"We also believe that the purchase price proposed by the bill exceeds the price that could be justified under a system of multiple-use sustained-yield management of the property as is required by law for national forest management. The price offered by the trustees is based on immediate liquidation of all the harvestable timber. Whereas, on a sustained-yield basis, the timber could be harvested over a long period of time and future incomes accordingly would have to be discounted to arrive at the property's worth for sustained-yield management.

"The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the administration's program.

"T. K. COWDEN, *Assistant Secretary."*

S. 761

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of August 13, 1954, as amended by the Act of August 23, 1958 (68 Stat. 718, 72 Stat. 816), is further amended by adding a new section 29 as follows:

SEC. 29. The Secretary of Agriculture is hereby authorized and directed to enter negotiations and to acquire by purchase or condemnation any Klamath Indian Forest lands which the Trustees for the Klamath Indian Tribe offer for sale pursuant to subsection 28(e) at a price that does not exceed $51,954,709, and the lands so acquired shall become a part of the Winema National Forest. The contract of purchase may provide for payment of the purchase price in installments, with interest or unmatured installments at a rate that does not exceed the cost to the United States of borrowing money under similar circumstances, as determined by the Secretary of the Treasury, and a purchase contract.

By Mr. HARTKE (for himself, Mr. PASTORE, Mr. RIBICOFF, Mr. THURMOND, Mr. MAGNUSON, Mr. GURNEY, Mr. TOWER, Mr. MCGEE, Mr. MOSS, Mr. BEALL, Mr. CHILES, Mr. NUNN, Mr. ABOUREZK, Mr. CRANSTON, Mr. HELMS, Mr. ALLEN, and Mr. HOLLINGS):

S. 762. A bill to authorize recomputation at age 60 of the retired pay of members and former members of the uniformed services whose retired pay is computed on the basis of pay scales in effect prior to January 1, 1972, and for other purposes. Referred to the Committee on Armed Services.

Mr. HARTKE. Mr. President, I offer a bill designed to alleviate an injustice that has been done by the Congress to the retired members of our uniformed services.

The bill which I have offered will provide a one-time recomputation of military retirement benefits to the January 1, 1972, rates. The 1972 rates will be effective immediately for persons who have retired for physical disability under the laws in effect before 1949, or a physical disability of at least 30 percent under later laws, and for nearly all those who have retired for years of service and are 60 or more years of age. Other retirees who are not yet 60 would have their retired pay recomputed at the time they reach that age.

I am in the unusual position of acting to redeem a campaign promise made by President Nixon in 1968. As part of his election drive, the President felt that the precipitous suspension of the recomputation system was, and I quote the President:

"A breach of faith for those hundreds of thousands of American patriots, who have devoted a career of service to their country and who, when they entered the service, relied upon the laws insuring equal retirement benefits."

The President pledged to remedy this inequity as soon as possible—that was almost 4 years ago.

Senator HUMPHREY and Governor Wallace were equally strong in their endorsement of a restoration of recomputation rights to retired officers.

Cost estimates of the Hartke bill are $343 million for the first year. Projections through the year 2000 yield an estimated lifetime cost of some $19 billion.

Mr. President, our retired military personnel have relied on a recomputation system that stood for almost 100 years. From 1861, when the President approved "an act for the better organization of the military establishment," officers of the uniformed services were entitled to retire for length of service and to have their pay determined initially as a percentage of the rates in existence at the time, to be recomputed upon the new rates each time raises were granted in the future to the members of the active forces.

Similar provisions were made for enlisted members of the forces a few years later.

This system was in continuous operation until passage of the Joint Services Pay Act of 1922, which denied to those retired prior to the effective date of the Act, the right to recompute their retired pay on the basis of the new schedules.

In 1926, the 69th Congress corrected this injustice by restoring the right to recomputation for those on the retired rolls. The Senate committee report stated that:

The 1922 legislation deprives all officers retired prior to that date of said benefits, thereby violating the basic law under which these officers gained their retirement rights. There is no justice in two pay schedules for equal merit and equal service. (Senate Report 364, 69th Congress.)

I submit, Mr. President, that the 1926 statement is equally valid today. And yet, Mr. President, today we have 11 different rates of retired pay for retirees of equal grade and service, with the oldest retirees, whose need is apt to be greatest, in each case receiving the smallest pay and the youngest receiving the largest. The disparity in many cases approaches 50 percent.

This situation exists because of the sudden suspension of the recomputation system in 1958 and its repeal in 1963, at which time a system of raises based upon increases in the cost of living was substituted with no "savings clause" to protect the previously earned benefit. This new provision has utterly failed to make up for the loss of the earned right to which the retirees had previously been entitled.

The reduction in the earned benefit was made in spite of the fact that the recomputation system had been reconfirmed by Congress in each pay act passed since it was restored in 1926, and in spite of the fact that the 1958 pay act was built upon the recommendations of

the Cordiner Military Pay Study Committee. The Cordiner Committee concluded that:

The incentive value of the existing military retirement system depends to a major degree upon its integral relationship with active duty compensation and the confidence which has been built up in the military body that no breach of faith or breach of retirement contract has ever been permitted by Congress and the American people.

As a consequence of the actions taken in 1958 and 1963, merit and length of service are no longer primary factors in determining the compensation a retiree will receive during the inactive phase of his career. On the contrary, it has now become a matter of when the individual was born and how successful he was in manipulating a favorable retirement date. For instance, a lieutenant colonel retiring today receives more retired pay than a major general who retired only 10 years ago.

In 1968, President Nixon pledged to submit legislation "to remedy this injustice at the earliest possible time."

In keeping with that pledge, in 1971 he appointed an Interagency Committee to study the problem and on April 15 of last year, he submitted a compromise proposal to Congress based upon the committee's recommendation. The Nixon proposal was for a "one time" recomputation based on the 1971 pay scales for certain classes of physically disabled retirees and for those with less than 25 years of service who are over age 60 and those with 25 or more years of service at age 55. The administration bill had a first year price tag of $332 million and a lifetime cost of $17 billion. The fiscal 1974 budget includes a first year recomputation cost of $360 million—some $17 million more than the current Hartke proposal.

I think we have waited too long to remedy this injustice to those who have honorably and faithfully served their country during the two World Wars, Korea, and Vietnam.

A full restoration of the recomputation system, however, implies a cost in excess of $1 billion in fiscal year 1973. The lifetime cost of full restoration would be more than $137 billion. I propose a simpler and I believe a fairer solution than the one forwarded by the Department of Defense for the administration. At the same time, it is designed to keep the expenditure at a reasonable level.

Perhaps at a later time, the appropriate committee can take up a proposal for a continuing system of recomputation for those who entered the service in the expectation that the Government would carry out its obligation. I would support such a move. However, at the moment, I believe it important that we take the first step in making good on the ethical obligation which we owe to those who served their country so well.

Mr. President, I ask unanimous consent that the text of the Hartke recomputation bill be printed following the close of my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 762

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That notwithstanding any other provision of law, a member or former member of a uniformed service (1) who is 60 years of age or older on the date of enactment of this Act or becomes 60 years of age after such date, and is entitled to retired or retainer pay computed under the rates of basic pay in effect before January 1, 1972, or (2) who is entitled to retired pay for physical disability under title IV of the Career Compensation Act of 1949 (63 Stat. 816–825), as amended, or chapter 61 of title 10, United States Code, whose disability was finally determined to be of permanent nature and at least 30 percent under the standard schedule of rating disabilities in use by the Veterans' Administration at the time of that determination, and whose pay is computed under the rates of basic pay in effect before January 1, 1972, is entitled to have that pay recomputed upon the rates of basic pay in effect on January 1, 1972.

SEC. 2. A member or former member of a uniformed service whose retired or retainer pay is recomputed under the first section of this Act is entitled to have that pay increased by any applicable adjustments in that pay under section 1401a of title 10, United States Code, which occur after January 1, 1972.

SEC. 3. A member or former member of a uniformed service who is 60 years of age or older on the date of enactment of this Act and is entitled to have his retired pay recomputed under the first section of this Act shall be entitled to retired pay based upon such recomputation effective on the first day of the first calendar month following the month in which this Act is enacted; and a member or former member of a uniformed service who attains age 60 after the date of enactment of this Act and is eligible to have his retired pay recomputed under the first section of this Act shall be entitled to retired pay based upon such recomputation effective on the first day of the first calendar month following the month in which he attains age 60.

SEC. 4. The enactment of the first two sections of this Act does not reduce the monthly retired or retainer pay to which a member or former member of a uniformed service was entitled on the day before the effective date of this Act.

SEC. 5. As used in this Act, the term "uniformed services" has the same meaning ascribed to such term by section 101(3) of title 37, United States Code.

By Mr. MOSS:

S. 763. A bill to amend title XIX of the Social Security Act to require any nursing home, which provides services under State plans approved under such title, fully to disclose to the State licensing agency the identity of each person who has any ownership interest in such home or is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such home. Referred to the Committee on Finance.

NURSING HOME OWNERSHIP

Mr. MOSS. Mr. President, I introduce, for appropriate reference, a bill to require any skilled nursing facility or intermediate care facility, receiving funds under title 19 of the Social Security Act, to disclose to the State the identity of each person who has any ownership at all in the facility.

The present law requires that anyone with a 10-percent or greater interest in a skilled home or an intermediate care facility must disclose such interest. This provision has been avoided by a host of techniques such as by allocating a 9-percent interest in the name of family and friends, or by disguising ownership through the use of mortgages and deeds of trust.

This loophole in the law must be closed if the law is to be meaningful. The Governor's Commission on Nursing Home Problems in the State of Maryland concluded that under the existing law, it is impossible to find out who actually owns the State's nursing homes. The commission endorsed this bill, which was S. 2927 in the 92d Congress, as a solution.

The bill simply asserts the public's right to know who is the owner or the beneficial owner of long-term care facilities. This right grows out of the fact that the taxpayer contributes more than $2 out of every $3 of nursing home revenues.

The bill that I am introducing today received a favorable report from the Department of Health, Education, and Welfare and was adopted by the Senate as an amendment to H.R. 1, last year's social security bill. However, the amendment was lost in conference. I am hopeful that this bill will be adopted in this session.

Mr. President, I ask unanimous consent that the report on S. 2927 of the 92d Congress from the office of then Secretary of HEW, Elliott Richardson, be printed in the RECORD at this point.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., July 13, 1972.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of December 21, 1971, for a report on S. 2927, a bill to amend Title XIX of the Social Security Act to require any nursing home, which provides services under State plans approved under such title, fully to disclose to the State licensing agency the identity of each person who has any ownership interest in such home or is the owner (in whole or in part) of any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by such home.

Present legislation provides that the State agency be apprised of full and complete information concerning the identity of any person having an ownership interest of 10 percent or more in any such nursing home. The proposed bill would (a) expand the present requirement to include persons having any ownership interest and (b) clarify the meaning of ownership by specifying persons who are owners of mortgages, deeds of trust, or other obligations.

The Department favors the principle of disclosure of information regarding nursing home ownership to the State agency, and would favor clarification of the meaning of ownership to include owners of mortgages, deeds of trust, notes, etc. We have no objection to the expansion of the present requirement to include persons having an ownership interest of less than 10 percent.

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

ELLIOT L. RICHARDSON,
Secretary.

By Mr. MOSS:

S. 764. A bill to amend title VII of the Public Health Service Act to provide for the making of grants to schools of medicine to assist them in the establishment and operation of departments of geriatrics. Referred to the Committee on Labor and Public Welfare.

ESTABLISHMENT OF DEPARTMENTS OF GERIATRICS IN SCHOOL OF MEDICINE

Mr. MOSS. Mr. President, I introduce, for appropriate reference, a bill to provide grants to schools of medicine to establish departments of geriatrics.

This bill, which was introduced as S. 2931 in the 92d Congress, received wide support from all quarters of the health care industry. It is an effort to attack what I have described as one of the five major problems in the field of long-term care—and that is the simple fact that physicians avoid the nursing home and do not view it as part of the medical continuum.

A 1960 report issued by the Subcommittee on Problems of the Aged and Aging of the Senate Committee on Labor and Public Welfare concluded that:

Management of patients in nursing homes by physicians is either lacking or inadequate.

Unfortunately, things have not changed very much since then.

Testimony received in past sessions by the Senate Subcommittee on Long-Term Care, indicate that doctors have little interest in nursing homes for a variety of reasons.

First, it is more difficult to deal with aged patients, many of whom cannot communicate with the physician.

Second, the staff of nursing homes is not trained in the same sophisticated degree as hospital staffs, which handicaps the physicians.

Third, most nursing homes are located some distance away from hospitals or other health facilities, and it requires extra time for the physicians to travel to them.

Fourth, doctors tend to be "acute-oriented"—what I call the "Marcus Welby syndrome"—and prefer to treat younger patients in whom they can see marked improvement. "In a nursing home all you can do is postpone death" we were told.

Fifth, many doctors feel that it is depressing to visit nursing homes; that it is unpleasant to work with patients who are unstimulated, unresourceful and many of whom have been rejected by their own families.

Sixth, there is no organized medical staff in most nursing homes. There might be as many as 40 physicians serving a nursing home of 140 patients—each doctor a law unto himself with little knowledge about the patients of his fellow physicians and with no one in a position of ultimate responsibility for the care of patients on whom he can rely.

Seventh, payments are low for physician visits under medicare and medicaid.

The root of the problem is, of course, that geriatrics has not developed as a specialty in this country. There is unimpeachable evidence that the medical problems of the elderly require separate and specialized education. This education is not readily available in the United States. My personal survey of schools of medicine in this country turned up the fact that only three schools have anything approaching a department of geriatrics. My bill would provide the funds and the incentive to correct this situation.

There is much we can learn from other countries, notably Sweden and England in this matter. As we continue to lengthen the lifespan we will be confronted with more and more people living into their eighties and nineties. The practice of medicine must grow to keep pace with their needs. Present research indicates that we are very close to a major breakthrough in inhibiting the aging process with chemotherapy.

However, there is a real paucity of knowledge as to the appropriate diagnostic and therapeutic techniques for people advanced in years. For this reason I will support Senator EAGLETON's bill shortly to be introduced, creating a National Institute of Geriatrics at the National Institutes of Health. I introduced a bill to this effect in the last Congress and I shall not reintroduce it because I anticipate the passage in this Congress of the Eagleton bill. It passed last session only to meet with an 11th hour Presidential pocket veto.

My bill to help establish department of geriatrics in schools of medicine takes one small step toward the goal of helping the medical profession recognize the needs of the infirm elderly, and training to meet them.

I am pleased to note that the American Medical Association has sponsored a series of seminars, financed by an HEW grant, to acquaint their membership with the needs of long-term care patients. However, a much broader program is required, and I hope this bill will be approved swiftly.

By Mr. MOSS:

S. 765. A bill to amend title VII of the Public Health Service Act to train certain veterans, with appropriate experience as paramedical personnel, to serve as medical assistants in long-term health care facilities. Referred to the Committee on Labor and Public Welfare.

TRAINING OF PARAMEDICAL PERSONNEL

Mr. MOSS. Mr. President, I offer, for appropriate reference, a bill to authorize grants to train certain veterans with appropriate experience as paramedical personnel—Medics—to serve as medical assistants in long-term care facilities.

This bill is offered as a way of ameliorating one of the major problems in the field of long-term care—the absence of the physician from the nursing home setting. I am discussing many of the reasons for the physician's absence in a statement I am making today in introducing my bill to provide grants to schools of medicine to establish departments of geriatrics.

However, I neglected to mention one important factor because I felt it would be more appropriate to the discussion of legislation to train paramedical personnel. That is the well-known fact that physicians are in very short supply, and therefore many of them are greatly overworked. This results in a particularly serious physician shortage in rural areas. The Congress has tried to remedy this shortage by using Federal grants, or by forgiving Federal loans, when medical students in training agree to practice later on for a given period in areas of greatest need.

The competition for the physician's time works a particular hardship on nursing homes. They do not fare well. To a certain extent, certain Federal policies under medicare tend to increase the problem.

Under medicare original regulations a physician was required to see patients every 30 days. This was not always honored, I regret to say. New rules now require a physician who sees a patient more than once a month to provide a list of reasons why additional visits were necessary. So what was originally a requirement to insure that patients are visited regularly, has been turned into a limitation.

One solution to infrequent physician visits to nursing homes is to give medical corpsmen discharged from the armed services a concentrated course in the special needs of geriatric patients and then let them serve as medical assistants in nursing homes. My bill authorizes just that. It would authorize $2½ million in fiscal 1974, and $5 million in the next 3 fiscal years. It is not a new concept and HEW has experimented with it to some degree. I find it totally sensible. I hope this bill will be enacted.

By Mr MOSS:

S. 766. A bill to amend title VII of the Public Health Service Act to provide for the making of grants to appropriate colleges and universities to assist them in the establishment and operation of programs for the training of physicians' assistants. Referred to the Committee on Labor and Public Welfare.

TRAINING OF PHYSICIANS' ASSISTANTS

Mr. MOSS. Mr. President, I offer, for appropriate reference, a bill making grants to colleges and universities to assist them in establishing programs for the training of physician's assistants. This bill represents an effort to increase the supply of physician's assistants so they can help ease the shortage of physicians generally and specifically the shortage in nursing homes.

I define "physician's assistants" as they are defined by the American Medical Association Committee on the subject:

A skilled person qualified by academic and practical training to provide patient services under the direction of a licensed physician who is responsible for the performance of that assistant.

This bill is another segment of my efforts to upgrade the quality of medical care in long-term care facilities. Other bills I am introducing would help establish geriatrics as a specialty in this country, and train medical corpsmen in geriatrics so that they might assume some responsibility in nursing homes.

I also intend to introduce, in the future, a bill to provide for the training of a corps of nurse practitioners composed mainly of registered nurses who have completed two additional semesters of

specialized work in geriatrics. These nurse practitioners could then be placed in charge of the medical care in long-term care facilities, subject to the overall control and responsibility of the physician under contract with the facility.

I believe that both physician's assistants and nurse practitioners, if trained in geriatrics, can do much to ameliorate the medical problems of long-term care facilities.

My present bill authorizes $10 million a year to qualify colleges and universities for the training of physician's assistants. I hope we can take final action on it this session.

It was included in H.R. 1, the social security amendments enacted in the 92d Congress, but only on a demonstration basis. The provision in H.R. 1 authorizes the Secretary to conduct experiments with the use of physician's assistants and nurse practitioners and to make recommendations as to their future use. I look forward to the results of these demonstration projects, because I feel strongly that the effective use of nurse practitioners and physician's assistants can mean marked improvement in the quality of medical care, particularly to the 1 million residents of our nursing homes.

By Mr. FANNIN (for himself and Mr. GOLDWATER):

S. 767. A bill to facilitate the incorporation of the reclamation townsite of Page, Ariz., Glen Canyon unit, Colorado River storage project, as a municipality under the laws of the State of Arizona, and for other purposes. Referred to the Committee on Interior and Insular Affairs.

Mr. FANNIN. Mr. President, I am introducing a bill to facilitate the incorporation of the reclamation townsite of Page, Ariz. The purpose of the legislation would be to separate the unincorporated area in Coconino County, Ariz., known as Page, from the Colorado River storage project.

By enactment of this bill the people of the community could enjoy self-government under the laws of Arizona. The real and personal property interests of the United States within the described municipal boundary would be transferred to municipality when the property is no longer needed by the United States.

The town of Page developed in conjunction with the construction of Glenn Canyon Dam and the associated recreational areas around Lake Powell. With the completion of these facilities the town has experienced a transition from an encampment for those who built these projects to a community of permanent residents who wish to become self-governing. This legislation meets their objective and over a 10-year period relieves the Bureau of Reclamation and Secretary of Department of Interior of the burden and responsibility of managing a community.

The character of the town of Page is changing and developing at a rapid rate to meet the needs of the area, ranging from tourism to the business of providing a vast array of services for miles around. The bill is structured to enable the municipality to assume the fiscal and community responsibilities which are rightfully those of local government.

By Mr. HARTKE (for himself, Mr. WEICKER, Mr. PELL, Mr. KENNEDY, Mr. JAVITS, Mr. SCOTT of Pennsylvania, Mr. RIBICOFF, Mr. PASTORE, Mr. BEALL, Mr. BIDEN, Mr. WILLIAMS, and Mr. BROOKE):

S. 768. A bill to provide improved high-speed rail passenger service between Boston, New York, and Washington, by 1976. Referred to the Committee on Commerce.

SPIRIT OF '76 HIGH SPEED RAIL ACT

Mr. HARTKE. Mr. President, Senators WEICKER, PELL, KENNEDY, BROOKE, JAVITS, SCOTT of Pennsylvania, RIBICOFF, PASTORE, BEALL, BIDEN, and WILLIAMS, and I today introduce the Spirit of '76 Rail Passenger Act. The bill would provide for high-speed rail passenger service between Boston, New York, and Washington, D.C., by authorizing necessary improvement to the existing rail route and by directing Amtrak to use advanced-designed equipment for such service.

It is no secret that we have created a giant problem in densely populated regions of our country by a single-minded fixation on the automobile as the primary mode of passenger transportation. Where the automobile was once a convenient and pleasant means of transportation, today it all too often brings aggravation, congestion, environmental deterioration, and a heavy toll of fatal accidents.

The automobile once was an alternative means of getting from one place to another. In our failure to develop and modernize rail passenger services we have lost the balance among transportation modes and the weight has shifted to the automobile. As a consequence we have deprived ourselves of the benefits of both the automobile and the railroad.

The Spirit of '76 Rail Passenger Act is introduced with the goal of moving us one step closer to achieving the necessary balance between the automobile and other modes of transportation. Metroliner service has clear evidence that passengers can be attracted to trains. It also shows that speed is the dominant criterion in bringing people to the railroads for the relatively short haul or charter service. It is my hope that the high-speed service made possible in the Northeast Corridor by the roadbed improvements and advanced-designed equipment contemplated in the bill will lead the way for modern, high-speed trains in other corridors throughout the Nation, including Chicago-Indianapolis-Cincinnati.

The service contemplated in our bill should be available by 1976. Such service would be a fitting tribute to our Nation's bicentennial. It would combine useful service to the people of the Northeast while demonstrating new avenues for solution of passenger service. It would reflect the pathfinding spirit and inventive genius of our forefathers while bringing freedom for the confining congestion of an unbalanced antiquated transportation system.

Mr. President, section 3 of the bill directs Amtrak to establish high-speed rail passenger service between Boston, New York, and Washington, D.C., using advanced-designed equipment.

Sections 4 and 5 increase Amtrak's loan guarantee authority and its direct appropriations authority to allow it to purchase equipment, make terminal improvements, and undertake the construction contemplated by the bill.

Section 5 authorizes the Secretary of Transportation to construct railroad improvements recommended in the Department of Transportation report entitled "Recommendations for Northeast Corridor Transportation."

Sections 6, 7, and 8 provide labor protection to assure, first, that work done pursuant to this act shall be done by railroad personnel who have customarily performed such work; second, that fair and equitable arrangements for the protection of the interest of railroad employees shall be undertaken; and third, that the Corps of Engineers shall take such action as may be necessary to insure that all laborers and mechanics employed by contracts for the performance of construction work shall be paid prevailing wages.

Sections 9 and 10 pertain to condemnation powers and section 11 requires the Secretary of Transportation to report to the President and the Congress no less than once a year with respect to activities carried out under the act.

Mr. President, $400 million is appropriated in this bill for attainment by the Secretary of Department of Transportation to the Corps of Engineers for the purpose of constructing or improving rights-of-way, trackage, bridges, grade crossings, safety, and other related facilities, such as those recommended by the Secretary of Transportation in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation." I believe that the operations envisioned by this bill will be profitable. If substantial profits do accrue, Amtrak can use the extra money to pay for further improvements in the corridor and for improvements elsewhere. Congress has appropriated over $5 billion for waterway projects without any expectation of repayment from profits or user charges. The cost-benefit ratio of this project will equal or exceed that of any waterway project. As a step toward a more balanced transportation system, I believe that we must evaluate and finance railroad projects on the same basis as waterway projects.

The Spirit of '76 Rail Passenger Service Act would permit the implementation of DOT's Northeast Corridor report. I have chosen this approach because it allows us to make use of existing facilities. Further, the report furnishes specific and detailed documentation for objectives of the bill. Thus, utilizing existing work, we may expect quick progress from the measure.

Service and facility improvements contemplated by this bill will permit, in a relatively short time, nonstop schedules of 2 hours between New York and Washington, and 2¾ hours between New York and Boston, based on the use of Metroline-type equipment with relatively conventional suspension systems. Faster schedules might be attained through the utilization of equipment with advanced

banking suspension systems which allow for substantially faster speeds on curves. The United Aircraft turbo train is but one example. Another, the British "Advanced Passenger Train" is now in the testing state, as is the Canadian LRC. The French have their own version of the turbo train in revenue service.

This bill requires that Amtrak be the operating agency for the service. Many of us in the Senate, including the Senator from Connecticut (Mr. WEICKER) and I, have been rather critical of Amtrak's performance. Hopefully, there will be considerable improvement by the time the track and roadway improvements are complete and the trains are ready to roll. If not, we will have to consider the alternative of organizing a regional agency to run the service.

The bill is consistent with and complementary to the Interstate Railroad Act, which I introduced together with Senators TAFT, WEICKER, PELL, and WILLIAMS. That bill is intended to rehabilitate main line railroads throughout the country to allow 80-mile-an-hour operation for both freight and passenger trains although it does not contain funding for the provision of facilities in specific corridors for high speed passenger operations.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD at this point.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Spirit of '76 High Speed Rail Act."

FINDINGS AND DECLARATION OF PURPOSE

SEC. 2. The Congress finds that public convenience and necessity require modern, efficient, intercity railroad passenger service, as part of a balanced transportation system, to provide fast and comfortable transportation between crowded urban areas in the Northeast Corridor of the United States; that rail passenger service can help alleviate congested highways and airways; that rail passenger service offers one of the safest forms of transportation; that to become a viable and competitive system, rail passenger service should operate between Boston and New York, and between New York and Washington, in two hours; that an appropriate date for the initiation of such service would be 1976, when millions of additional travelers are expected to use transportation facilities between historical centers in the Northeast Corridor; and that to enhance this investment in improved service, it should be designed to coordinate with a plan, which could be considered by Congress at a future date, to provide super speed rail passenger service between the same cities in one hour, using the high speed rail facilities as a feeder service, for implementation in the decade following 1976.

HIGH SPEED RAIL PASSENGER SERVICE

SEC. 3. The National Railroad Passenger Corporation, established pursuant to the Rail Passenger Act of 1970, as amended, is directed to establish high speed rail passenger service, as recommended by the Secretary of Transportation in his report of September, 1971, entitled "Recommendations for Northeast Corridor Transportation" between Boston, New York and Washington, D.C., serving such intermediary stops as it may determine, and using facilities constructed or improved pursuant to this Act. Such service shall utilize advanced design rolling stock in order to test the economic practicality, operating performance, and public acceptance of such rolling stock.

SEC. 4. Section 602(d)(2) of the Rail Passenger Act of 1970, as amended, is hereby amended to read as follows:

"(2) may not exceed $425,000,000 after June 30, 1973, with $225,000,000 of loan proceeds to be applied towards financing of equipment and terminal improvements, such as those recommended by the Secretary of Transportation in his report of September 1971, entitled "Recommendations for Northeast Corridor Transportation'."

SEC. 5. Section 601 of the Rail Passenger Act of 1970, as amended, is hereby amended by inserting, after subsection (b), the following:

"(c) There is authorized to be appropriated $400,000,000, for payment, pursuant to terms and conditions prescribed by the Secretary, to the Corps of Engineers, United States Army, for the purpose of constructing or improving rights of way, trackage, bridges, grade crossings, safety and other related facilities, such as those recommended by the Secretary of Transportation in his report of September 1971, entitled 'Recommendations for Northeast Corridor Transportation'. Any sums appropriated shall be available until expended."

SEC. 6. Construction or improvements made pursuant to this Act shall be done by railroad personnel under the supervision of and in consultation with the Corps of Engineers. Such railroad personnel shall be those who have customarily performed such work. Construction or improvements made pursuant to this Act shall, in addition, utilize railroad facilities to the maximum extent. Contracts for the performance of work not customarily performed by railroad personnel or facilities shall be entered into by means of competitive bidding.

SEC. 7. Prior to entering into any undertaking for the performance of work described in Sections 4 and 6 of this Act, the National Railroad Passenger Corporation shall certify to the Secretary of Transportation that there has been executed an agreement or agreements between railroads involved in such work and the representatives of their employees providing fair and equitable arrangements for the protection of the interests of such employees which may be affected by such work; provided, however, that in the absence of any such executed agreement or agreements the Secretary of Labor shall certify to the Secretary of Transportation who shall prescribe, prior to any undertaking of such work, the protective arrangements to apply in connection with the performance of such work. Any such protective arrangements certified by the Secretary of Labor and prescribed by the Secretary of Transportation shall provide no less protection for the interests of such employees than those protective arrangements certified by the Secretary of Labor under the provisions of the Rail Passenger Service Act of 1970, as amended.

SEC. 8. The Corps of Engineers shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors and subcontractors in the performance of such construction work shall be paid wages at rates not less than those prevailing on similar constructions in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. The Corps shall not enter into any contract or agreement without first obtaining adequate assurance that required labor standards will be maintained on the construction work. Health and safety standards promulgated by the Secretary of Labor pursuant to section 333 of title 40 shall be applicable to all construction work performed by a railroad employee. Wage rates provided for in collective bargaining agreements negotiated under and pursuant to the Railway Labor Act shall be considered as being in compliance with the Davis-Bacon Act.

SEC. 9. The Secretary of Transportation may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquisition of other than existing railroad owned assets, by condemnation of any land, easement, right-of-way, or material needed to enable the Corps of Engineers to perform work pursuant to this Act; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the states wherein the proceedings may be instituted: *Provided, however,* That when the owner of such land, easement, right-of-way, or material shall fix a price for the same, which in the opinion of the Secretary of Transportation shall be reasonable, he may purchase the same at such price without further delay: *And provided further,* That the Secretary of Transportation is authorized to accept donations of lands, easements, rights-of-way, or materials required for such work. In any condemnation proceeding instituted under this Act, where only a part of any parcel, lot or tract of land shall be taken, the court shall take into consideration by way of reducing the amount of compensation any special and direct benefits to the remainder arising from the work.

SEC. 10. Upon the filing of the petition in any condemnation proceedings hereinbefore authorized, the United States shall have the right to take immediate possession of lands, easements, rights of way, or material, to the extent of the interest to be acquired, provided, that certain and adequate provision shall have been made for the payment of just compensation to the party or parties entitled thereto, by the deposit of moneys or other form of security in such amount and form as shall be approved by the court in which such proceedings shall be instituted. The respondent or respondents may move at any time in the court to increase the amounts or securities, and the court shall make such order as shall be just in the premises and as shall adequately protect the respondent. In every case the proceedings in condemnation shall be diligently prosecuted on the part of the United States in order that such compensation may be promptly ascertained and paid.

SEC. 11. The Secretary of Transportation shall report to the President and the Congress no less often than annually with respect to activities carried out under this Act. The Secretary shall, if requested by any appropriate committee of the Senate or House of Representatives, furnish such committee with information concerning activities carried out under this Act.

By Mr. TUNNEY:

S.J. Res. 50. A joint resolution authorizing the President to proclaim the last week in June of each year as "National Autistic Children's Week." Referred to the Committee on the Judiciary.

NATIONAL AUTISTIC CHILDREN'S WEEK

Mr. TUNNEY. Mr. President, I am today reintroducing a joint resolution to proclaim the last week of June of each year as National Autistic Children's Week.

The plight of autistic children in this country is truly a sad one. Inadequate programs, inadequately funded, cause thousands of parents throughout the country the anguish of trying without success to provide the education and treatment which can enable these children to lead normal lives.

During the past year, I have become

deeply concerned about the meager efforts by both Federal and State governments to help these children.

In fact, they have been completely excluded from the one major Federal program which could offer them substantial assistance—the Developmental Disabilities Act.

During this session of Congress, we will have the opportunity to revise the law and to right what I consider to be a tragic exclusion. I plan to join in leading that effort, because I believe we must end that needless discrimination.

I would emphasize that this effort is in no way designed to dilute the resources available for programs for the mentally retarded children with other developmental disabilities. We must increase the funding levels to assure that all of these children receive adequate programs.

In addition Senator HOLLINGS has recently reintroduced S. 34, the Autistic Children Research Act, a bill to provide accelerated research and development in the care and treatment of autistic children. I support him in this effort.

Both of these bills will make important progress toward helping the autistic child. But more is needed. Last summer, I visited the Reiss Davis Child Study Center in Los Angeles.

This center provides an excellent example of what can be done to provide education and treatment for autistic children. The community support which this center has been able to muster has been most impressive. In fact, it has enabled the center to survive as one of the few which provides services for autistic children.

But the need far exceeds the limited resources of centers such as this. And for that reason I am offering this resolution to aid in increasing public awareness of the needs of these children and to build the public support needed to gain passage of an adequate revision of the Developmental Disabilities Act this year.

Through the observance of National Autistic Children's Week it is my hope that we can gain that awareness and support. One very tangible benefit might be an increase in early identification of children with autism. It might also serve to publicize existing programs and services for autistic children whose parents are as yet unaware of those services.

Observance of this week would offer new hope to thousands of parents of autistic children throughout the country and I hope this resolution can be adopted early this year.

Last year, in an attempt to change the regulations implementing the Development Disabilities Act to include autistic children, I wrote to HEW Secretary Richardson asking him to join me in this effort. I ask unanimous consent that that correspondence be printed at this point in the RECORD.

There being no objection, the correspondence was ordered to be printed in the RECORD, as follows:

HON. ELLIOT L. RICHARDSON,
Secretary, Department of Health, Education, and Welfare, Washington, D.C.

MR. SECRETARY: It is my understanding that you will shortly issue regulations implementing the Developmental Disabilities Services and Facilities Construction Act of 1970. As you know, this legislation assists States in constructing facilities for and providing services to persons affected by so called "developmental disabilities" which originate in childhood and constitute a substantial and continuing handicap to the individual.

Section 102(a)(5) of that Act defines the term "developmental disability" for purposes of the legislation as follows:

"A disability attributable to mental retardation, cerebral palsy, epilepsy, or another neurological condition of an individual found by the Secretary to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals. The disability must have originated before the age of eighteen and have continued or be expected to continue indefinitely and must constitute a substantial handicap to the individual in question."

It is my understanding, however, that during the two years since the enactment of this law, no "other neurological condition" has been included in the coverage of this law despite the clear intent of the language that such inclusions be made.

I am writing to you at this time to urge that you institute procedures to carry out the mandate contained in the law for inclusion of children afflicted with other Developmental disabilities. The use of such procedures would enable your Department to make specific recommendations for increased resources and expansion of coverage under the Act when it is considered for renewal next year.

A specific example of the need for such expansion is childhood autism. Childhood autism is a profoundly handicapping disturbance which appears very early in life and remains a handicap throughout life. Characteristically, children come to medical attention during the second year of life with developmental retardation. Frequently, they are suspected to be deaf because of their poor social contact, lack of general developmental skills and inability to learn social skills. The prognosis for these children is very bad. For children with a low IQ and who have no speech by age 5, their future is almost certainly chronic institutionalization. For these reasons I believe childhood autism should be included under the Act so that these children may gain the benefits of the facilities and services provided by it.

At present, autistic children are being excluded from the benefits of this program despite their tremendous need for those benefits. The principal reason for their exclusion is the meager funding of the present program. The resources presently available under the Act are inadequate even for those groups, such as the mentally retarded, which are specifically included in the law. Inclusion of autistic children should, therefore, not be made at the cost of reduced effort or resources for those presently covered.

But, they can be included in a revised and expanded program which the Congress can enact next year. By including in the new regulations a process for identification of other disabilities, such as childhood autism, which merit coverage under this program and then by making appropriate recommendations to the Congress based thereon, your Department could make a major contribution toward bringing new hope to thousands of parents and children across the country.

Sincerely,

JOHN V. TUNNEY,
U.S. Senator.

By Mr. JACKSON (for himself, Mr. BIBLE, and Mr. MATHIAS):

S.J. Res. 51. A joint resolution to authorize and request the President to issue a proclamation designating the calendar week beginning May 6, 1973, as National Historic Preservation Week. Referred to the Committee on the Judiciary.

Mr. JACKSON. Mr. President, I am introducing for appropriate reference a joint resolution to designate the week of May 6 as National Historic Preservation Week.

We are rapidly approaching the 200th anniversary of the founding of this Republic, and I can think of no more fitting time to recognize our heritage than the week of May 6 through May 12 which will coincide with the national awards presentation of the National Trust for Historic Preservation.

Mr. President, I feel that it is necessary that the American people give heightened attention to the preservation of the towns and villages, the buildings and places across the land which have shaped our lives and which are the tangible evidence of our past as a people.

In acknowledgment of the significance of historic preservation to our country today and in the bicentennial era immediately before us, I consider this measure particularly appropriate in light of the dramatic growth in public interest in historic preservation in recent years.

ADDITIONAL COSPONSORS OF BILLS AND JOINT RESOLUTIONS

S. 19

At the request of Mr. HOLLINGS, the Senator from Alaska (Mr. GRAVEL) and the Senator from Florida (Mr. GURNEY) were added as cosponsors of S. 19, a bill to authorize a program to develop and demonstrate low-cost means of preventing shoreline erosion.

S. 21

At the request of Mr. BEALL, the Senator from Alabama (Mr. ALLEN), the Senator from Tennessee (Mr. BAKER), the Senator from Nevada (Mr. BIBLE), the Senator from Tennessee (Mr. BROCK), the Senator from Arizona (Mr. GOLDWATER), the Senator from Virginia (Mr. SCOTT), the Senator from Georgia (Mr. TALMADGE), the Senator from South Carolina (Mr. THURMOND), and the Senator from Texas (Mr. TOWER) were added as cosponsors of S. 21, the Continuity of Education Act, a bill to prevent the forced transportation of elementary and secondary students during the course of the school year.

S. 40

Mr. DOMENICI. Mr. President, several legislative initiatives have been introduced in this Congress to set up an effective mechanism for Congress to fulfill its constitutional responsibility with regard to Federal spending.

I am gratified to see such initiatives.

I am convinced that we must reform the budgetary practices of Congress—and we must do it now, before this session moves on to other business.

We have a constitutional responsibility. It requires us to appropriate wisely, and that means we must set up an order of priorities among national needs. If we are actually to budget, we cannot do so with any logic until we have agreed upon an upper limit for appropriations.

To suggest that we continue in our present practices, which would be chaotic if they were followed by a private business or family, while giving lipservice to the rhetoric about doing a better job of budgeting is to mislead our citizens.

Unless this body adopts a budget ceiling, and does it before it proceeds with its regular business, its expenditures and appropriations have no relevance to sound fiscal spending.

We must fulfill this duty, we must begin to control the expenditures of the Government, in practice, not merely in talk, or we cannot control inflation and curb the national debt.

Mr. President, the time for action is now—and the responsibility is ours.

If we are to live up to the responsibility which brought us here, we should discuss the bills which would reform our practices—and we should discuss them forthwith.

The time for hollow rhetoric is past. It is imperative that we meet our constitutional responsibilities to control expenditures and determine national priorities, and that we meet them with promptness, with self-discipline, and with vigor.

For this reason I am pleased to join the distinguished Senator from Tennessee (Mr. BROCK) and the distinguished Senator from Georgia (Mr. NUNN) on their legislative proposal (S. 40) designed to require the Senate to face this issue squarely.

S. 49

At the request of Mr. HARTKE, the Senator from North Dakota (Mr. BURDICK), the Senator from Nevada (Mr. CANNON), and the Senator from Rhode Island (Mr. PASTORE) were added as cosponsors of S. 49, a bill to amend title 38 of the United States Code in order to establish a national cemetery system within the Veterans' Administration, and for other purposes.

S. 59

At the request of Mr. HARTKE, the Senator for North Dakota (Mr. BURDICK) was added as a cosponsor of S. 59, a bill to amend title 38 of the United States Code to provide improved medical care to veterans; to provide hospital and medical care to certain dependents and survivors of veterans; to improve recruitment and retention of career personnel in the Department of Medicine and Surgery.

S. 174

At the request of Mr. MONTOYA, the Senator from Minnesota (Mr. HUMPHREY), the Senator from South Carolina (Mr. HOLLINGS), and the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 174, a bill to provide for outpatient drugs under medicare.

S. 255

At the request of Mr. EAGLETON, the Senator from Maryland (Mr. BEALL), the Senator from New York (Mr. JAVITS), and the Senator from California (Mr. TUNNEY) were added as cosponsors of S. 255, a bill to repeal certain provisions which become effective January 1, 1974, of the Food Stamp Act of 1964 and section 416 of the Agricultural Act of 1949 relating to eligibility to participate in the food stamp program and the direct commodity distribution program.

S. 275

At the request of Mr. HARTKE, the Senator from North Dakota (Mr. BURDICK), the Senator from Florida (Mr. CHILES), the Senator from Florida (Mr. GURNEY), and the Senator from Rhode Island (Mr. PASTORE) were added as cosponsors of S. 275, a bill to amend title 38 of the United States Code increasing income limitations relating to payment of disability and death pension, and dependency and indemnity compensation.

S. 324

At the request of Mr. SCHWEIKER, the Senator from South Dakota (Mr. MCGOVERN) was added as a cosponsor of S. 324, the Nutritional Medical Education Act of 1973, which would amend the Public Health Service Act to provide for nutrition education in schools of medicine and dentistry.

S. 394

At the request of Mr. HUMPHREY, the Senator from New Jersey (Mr. WILLIAMS), the Senator from Rhode Island (Mr. PELL), and the Senator from Michigan (Mr. HART) were added as cosponsors of S. 394, to amend the Rural Electrification Act of 1936, as amended, to reaffirm that such funds made available for each fiscal year to carry out the programs provided for in such act be fully obligated in said year, and for other purposes.

S. 472

At the request of Mr. KENNEDY, the Senator from Minnesota (Mr. MONDALE) was added as a cosponsor of S. 472, a bill to establish within the Bureau of the Census a Voter Registration Administration to carry out a program of financial assistance to encourage and assist the States and local governments in registering voters.

S. 491

At the request of Mr. BEALL, the Senator from Colorado (Mr. DOMINICK) and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of S. 491, the Older Americans Comprehensive Services Amendments of 1973.

S. 502

At the request of Mr. BENTSEN, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 502, the Federal-Aid Highway Act of 1973.

S. 607

At the request of Mr. KENNEDY, the Senator from Washington (Mr. JACKSON) was added as a cosponsor of S. 607, amendments to the Lead-Based Paint Poisoning Prevention Act.

S. 619

At the request of Mr. ALLEN, the Senator from Texas (Mr. TOWER) was added as a cosponsor of S. 619, the Uniform Criteria Act of 1973.

S. 622

At his own request, Mr. CURTIS was added as a cosponsor of S. 622, a bill to provide price support for milk at not less than 85 percent of the parity price therefor.

S. 738

At the request of Mr. MUSKIE, the Senator from New Jersey (Mr. WILLIAMS) was added as a cosponsor of S. 738, a bill to establish and support State programs for auto emission control systems.

SENATE JOINT RESOLUTION 10

At the request of Mr. SCHWEIKER, the Senator from Nevada (Mr. BIBLE) and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of Senate Joint Resolution 10, the school prayer amendment to the Constitution.

SENATE JOINT RESOLUTION 11

At the request of Mr. HOLLINGS, the Senator from Alabama (Mr. ALLEN), the Senator from Tennessee (Mr. BAKER), the Senator from Utah (Mr. BENNETT), the Senator from Massachusetts (Mr. BROOKE), the Senator from Virginia (Mr. HARRY F. BYRD, JR.), the Senator from Nevada (Mr. CANNON), the Senator from Florida (Mr. CHILES), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arizona (Mr. GOLDWATER), the Senator from Arkansas (Mr. MCCLELLAN), the Senator from New Hampshire (Mr. MCINTYRE), the Senator from Washington (Mr. MAGNUSON), the Senator from Utah (Mr. MOSS), the Senator from Oregon (Mr. PACKWOOD), the Senators from Rhode Island (Mr. PASTORE and Mr. PELL), the Senator from Illinois (Mr. PERCY), the Senator from Alaska (Mr. STEVENS), the Senator from Georgia (Mr. TALMADGE), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Joint Resolution 11, a joint resolution paying tribute to law enforcement officers of this country on Law Day, May 1, 1973.

SENATE JOINT RESOLUTION 37

At the request of Mr. BENTSEN, the Senator from Texas (Mr. TOWER) was added as cosponsor to Senate Joint Resolution 37, designating the Manned Spacecraft Center in Houston, Tex., as the Lyndon B. Johnson Space Center.

SENATE CONCURRENT RESOLUTION 9—SUBMISSION OF A CONCURRENT RESOLUTION PROVIDING FOR THE PRINTING OF REMARKS OF TRIBUTE TO THE LATE PRESIDENT JOHNSON

(Referred to the Committee on Rules and Administration.)

Mr. BENTSEN submitted the following concurrent resolution:

S. CON. RES. 9

Resolved by the Senate (the House of Representatives concurring), That there be printed, with illustrations, as a Senate Document and bound, under the direction of the Joint Committee on Printing, all of the speeches and remarks which constitute tributes to the life, character, and public service of the late President of the United States, Lyndon Baines Johnson, and which were delivered on January 24 and 25, 1973, in the rotunda of the Capitol of the United States where the remains of the late President lay in state, at his funeral service held at the National City Christian Church, Washington, District of Columbia, and at his burial service in Texas, together with such additional explanatory matter as the Joint Committee may deem pertinent, and all speeches and remarks of tribute to the late President delivered in the Halls of Congress.

Sec. 2. There shall be printed and bound, as directed by the Joint Committee on Printing, thirty-two thousand two hundred and

fifty additional copies of such document, of which twenty-one thousand nine hundred and fifty copies shall be for the use of the House of Representatives and ten thousand three hundred copies shall be for the use of the Senate.

SENATE RESOLUTION 47—CHANGE OF REFERENCE

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, at the request of the distinguished senior Senator from Indiana (Mr. HARTKE), that the Senate Committee on Veterans' Affairs be discharged from the further consideration of Senate Resolution 47, authorizing additional expenditures by the Committee on Veterans' Affairs for inquiries and investigations, and that it be referred directly to the Senate Committee on Rules and Administration for its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered.

SENATE RESOLUTION 60—SUBMISSION OF A RESOLUTION TO ESTABLISH A SELECT COMMITTEE OF THE SENATE TO INVESTIGATE THE 1972 PRESIDENTIAL ELECTION

(Placed on the calendar.)

Mr. ERVIN (for himself and Mr. MANSFIELD) submitted the following resolution:

S. RES. 60

Resolution to establish a select committee of the Senate to conduct an investigation and study of the extent, if any, to which illegal improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the Presidential election of 1972, or any campaign, canvass, or other activity related to it.

Resolved, Section 1. (a) That there is hereby established a select committee of the Senate, which may be called for convenience of expression the Select Committee on Presidential Campaign Activities, to conduct an inevstigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting either individually or in combination with others, in the Presidential election of 1972, or in any related campaign or canvass conducted by or in behalf of any person seeking nomination or election as the candidate of any political party for the office of President of the United States in such election, and to determine whether in its judgment any occurrences which may be revealed by the investigation and study indicate the necessity or desirability of the enactment of new congressional legislation to safeguard the electoral process by which the President of the United States is chosen.

(b) The select committee created by this resolution shall consist of five members of the Senate, three of whom shall be appointed by the President of the Senate from the majority members of the Senate upon the recommendation of the Majority Leader of the Senate, and two of whom shall be appointed by the President of the Senate from the minority members of the Senate upon the recommendation of the Minority Leader of the Senate. For the purposes of paragraph six of Rule XXV of the Standing Rules of the Senate, service of a Senator as a member, chairman or vice chairman of the select committee shall not be taken into account.

(c) The select committee shall select a chairman and vice chairman from among its members, and adopt rules of procedure to govern its proceedings. The vice chairman shall preside over meetings of the select committee during the absence of the chairman, and discharge such other responsibilities as may be assigned to him by the select committee or the chairman. Vacanices in the membership of the select committee shall not affect the authority of the remaining members to execute the functions of the select committee, and shall be filled in the same manner as original appointments to it are made.

(d) A majority of the members of the select committee shall constitute a quorum for the transaction of business, but the select committee may fix a lesser number as a quorum for the purpose of taking testimony or depositions.

SEC. 2. That the select committee is atuhorized and directed to do everything necessary or appropriate to make the investigation and study specified in section 1 (a). Without abridging or limiting in any way the authority conferred upon the select committee by the preceding sentence, the Senate further expressly authorizes and directs the select committee to make a complete investigation and study of the activities of any and all persons or groups of persons or organizations of any kind which have any tendency to reveal the full facts in respect to the following matters or questions:

(1) The breaking, entering, and bugging of the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, D.C.;

(2) The monitoring by bugging, eavesdropping, wiretapping, or other surreptitious means of conversations or communications occurring in whole or in part in the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, D.C.;

(3) Whether or not any printed or typed or written document or paper or other material was surreptitiously removed from the headquarters or offices of the Democratic National Committee in the Watergate Building in Washington, D.C., and thereafter copied or reproduced by photography or any other means for the information of any person or political committee or organization;

(4) The preparing, transmitting, or receiving by any person for himself or any political committee or any organization of any report or information concerning the activities mentioned in subdivisions (1), (2), (3) of this section, and the information contained in any such report;

(5) Whether any persons, acting individually or in combination with others, planned the activities mentioned in subdivisions (1), (2), (3), or (4) of this section, or employed any of the participants in such activities to participate in them, or made payments or promises of payments of money or other things of value to the participants in such activities or their families for their activities, or for concealing the truth in respect to them or any of the persons having any connection with them or their activities, and, if so, the source of the moneys used in such payments, and the identities and motives of the persons planning such activities or employing the participants in them;

(6) Whether any persons participating in any of the activities mentioned in subdivisions (1), (2), (3), (4), or (5) of this section have been induced by bribery, coercion, threats, or any other means whatsoever to plead guilty to the charges preferred against them in the District Court of the District of Columbia or to conceal or fail to reveal any knowledge of any of the activities mentioned in subdivisions (1), (2), (3), (4), or (5) of this section, and, if so, the identities of the persons inducing them to do such things, and the identities of any other persons or any committees or organizations for whom they acted;

(7) Any efforts to disrupt, hinder, impede, or sabotage in any way any campaign, canvass, or activity conducted by or in behalf of any person seeking nomination or election as the candidate of any political party for the office of President of the United States in 1972 by infiltrating any political committee or organization or headquarters or offices or home or whereabouts of the person seeking such nomination or election or of any person aiding him in so doing, or by bugging or eavesdropping or wiretapping the conversations, communications, plans, headquarters, offices, home, or whereabouts of the person seeking such nomination or election or of any other persons assisting him in so doing, or by exercising surveillance over the person seeking such nomination or election or of any person assisting him in so doing, or by reporting to any other person or to any political committee or organization any information obtained by such infiltration, eavesdropping, bugging, wiretapping, or surveillance;

(8) Whether any person, acting individually or in combination with others, or political committee or organization induced any of the activities mentioned in subdivision (7) of this section or paid any of the participants in any such activities for their services, and, if so, the identities of such persons, or committee, or organization, and the source of the funds used by them to procure or finance such activities;

(9) Any fabrication, dissemination, or publication of any false charges or other false information having the purpose of discrediting any person seeking nomination or election as the candidate of any political party to the office of President of the United States in 1972;

(10) The planning of any of the activities mentioned in subdivisions (7), (8), or (9) of this section, the employing of the participants in such activities, and the source of any moneys or things of value which may have been given or promised to the participants in such activities for their services, and the identities of any persons or committees or organizations which may have been involved in any way in the planning, procuring, and financing of such activities.

(11) Any transactions or circumstances relating to the source, the control, the transmission, the transfer, the deposit, the storage, the concealment, the expenditure, or use in the United States or in any other country, of any moneys or other things of value collected or received for actual or pretended use in the presidential election of 1972 or in any related campaign or canvass or activities preceding or accompanying such election by any person, group of persons, committee or organization of any kind acting or professing to act in behalf of any national political party or in support of or in opposition to any person seeking nomination or election to the office of President of the United States in 1972;

(12) Compliance or noncompliance with any act of Congress requiring the reporting of the receipt or disbursement or use of any moneys or other things of value mentioned in subdivision (11) of this section;

(13) Whether any of the moneys or things of value mentioned in subdivision (11) of this section were placed in any secret fund or place of storage for use in financing any activity which was sought to be concealed from the public, and, if so, what disbursement or expenditure was made of such secret fund, and the identities of any person or group of persons or committee or organization having any control over such secret fund or the disbursement or expenditure of the same;

(14) Whether any books, checks, cancelled checks, communications, correspondence, documents, papers, physical evidence, records, recordings, tapes, or materials relating to any of the matters or questions the select committee is authorized and directed to investigate and study have been concealed, suppressed, or destroyed by any persons act-

ing individually or in combination with others, and, if so, the identities and motives of any such persons or groups of persons;

(15) Any other activities, circumstances, materials, or transactions having a tendency to prove or disprove that persons acting either individually or in combination with others, engaged in any illegal, improper, or unethical activities in connection with the presidential election of 1972 or any campaign, canvass, or activity related to such election;

(16) Whether any of the existing laws of the United States are inadequate, either in their provisions or manner of enforcement to safeguard the integrity or purity of the process by which presidents are chosen.

SEC. 3. (a) To enable the select committee to make the investigation and study authorized and directed by this resolution, the Senate hereby empowers the select committee as an agency of the Senate (1) to employ and fix the compensation of such clerical, investigatory, legal, technical, and other assistants as it deems necessary or appropriate, (2) to sit and act at any time or place during sessions, recesses and adjournment periods of the Senate; (3) to hold hearings for taking testimony on oath or to receive documentary or physical evidence relating to the matters and questions it is authorized to investigate or study; (4) to require by subpena or otherwise the attendance as witnesses of any persons whom the select committee believes have knowledge or information concerning any of the matters or questions it is authorized to investigate and study; (5) to require by subpena or order any department, agency, officer, or employee of the executive branch of the U.S. Government, or any private person, firm, or corporation or any officer or former officer or employee of any political committee or organization to produce for its consideration or for use as evidence in its investigation and study any books, checks, cancelled checks, correspondence, communications, document, papers, physical evidence, records, recordings, tapes or materials relating to any of the matters or questions it is authorized to investigate and study which they or any of them may have in their custody or under their control; (6) to make to the Senate any recommendations it deems appropriate in respect to the willful failure or refusal of any person to appear before it in obedience to a subpena or order, or in respect to the willful failure or refusal of any person to answer questions or give testimony in his character as a witness during his appearance before it, or in respect to the willful failure or refusal of any officer or employee of the executive branch of the U.S. Government or any person, firm or corporation, or any officer or former officer or employee of any political committee or organization, to produce before the committee any books, checks, cancelled checks, correspondence, communications, document, financial records, papers, physical evidence, records, recordings, tapes, or materials in obedience to any subpena or order; (7) to take depositions and other testimony on oath anywhere within the United States or in any other country; (8) to procure the services of any consultants or organizations it deems necessary or appropriate to aid it in the investigation and study it is authorized and directed by this resolution to make; (9) to use on a reimbursable basis with the prior consent of any department or agency of the executive or legislative branches of the U.S. Government the facilities or services of personnel of such department or agency; (10) to use on a reimbursable basis or otherwise with the prior consent of the chairman of any other of the Senate committees or the chairman of any subcommittee of any committee of the Senate the facilities or sevices of any members of the staffs of such other Senate committees or any subcommittees of such other Senate committees whenever the select committee or its chairman deems that such action is necessary or appropriate to enable the select committee to make the investigation and study authorized and directed by this resolution; (11) to have access through the agency of any of its investigatory or legal assistants designated by it or its chairman to any data, evidence, information, report, analysis, or document or papers relating to any of the matters or questions which it is authorized and directed to investigate and study in the custody or under the control of any department, agency, officer, or employee of the executive branch of the U. S. Government having the power under the laws of the United States to investigate any alleged criminal activities or to prosecute persons charged with crimes against the United States which will aid the select committee to prepare for or conduct the investigation and study authorized and directed by this resolution; (12) to procure either through assignment by the Rules Committee or by renting such offices and other space as may be necessary to enable it and its staff to make and conduct the investigation and study authorized and directed by this resolution; and (13) to expend to the extent it determines necessary or appropriate any moneys made available to it by the Senate to perform the duties and exercise the powers conferred upon it by this resolution and to make the investigation and study it is authorized by this resolution to make.

(b) Subpoenas may be issued by the select committee acting through the chairman or any other member designated by him, and may be served by any person designated by such chairman or other member anywhere within the borders of the United States. The chairman of the select committee, or any other member thereof is hereby authorized to administer oaths to any witnesses appearing before the committee.

(c) In preparing for or conducting the investigation and study authorized and directed by this resolution, the select committee shall be empowered to exercise the powers conferred upon committees of the Senate by Section 6002 of Title 18 of the U.S. Code or any other act of Congress regulating the granting of immunity to witnesses.

SECTION 4. The select committee shall have authority to propose legislation and to report its legislative proposals to the Senate in the form of bills, but no bills introduced by others shall be referred to it.

SECTION 5. The select committee shall make a final report of the results of the investigation and study conducted by it pursuant to this resolution, together with its findings and such legislative proposals as it deems necessary or desirable, to the Senate at the earliest practicable date, but no later than February 28, 1974. The select committee may also submit to the Senate such interim reports as it considers appropriate. After submission of its final report, the select committee shall have three calendar months to close its affairs, and on the expiration of such three calendar months shall cease to exist.

Section 6. The expenses of the select committee under this resolution shall not exceed $500,000, and shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the select committee.

Mr. ERVIN. Mr. President, I submit for appropriate reference a resolution establishing a Select Committee of the Senate to conduct an investigation and study of the extent, if any, to which illegal, improper, or unethical activities were engaged in by any persons, acting individually or in combination with others, in the presidential election of 1972, or any campaign, canvass, or other activity related to it, and ask for immediate consideration of the resolution.

Mr. MANSFIELD. Mr. President, will the Senator from North Carolina yield briefly there?

Mr. ERVIN. I yield.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the resolution, rather than being considered immediately, be placed on the calendar and that consideration of the resolution occur at the hour of 4 o'clock p.m., tomorrow afternoon.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

Mr. SCOTT of Pennsylvania. Mr. President, reserving the right to object, and I shall not object, this is a result of an agreement that this matter may be considered at that time rather than today in order that all Senators may have an opportunity to read the resolution, copies of which are on their desks and to which I solicit their attention.

Mr. MANSFIELD. Mr. President, may I say to the distinguished minority leader that he has been most cooperative because, as we are all aware, this matter could have gone to the calendar and I want to express my appreciation for the accommodation and the understanding shown by the minority leader.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from Montana?

Mr. ERVIN. Mr. President, I should like to say "Amen" to the gesture of the distinguished minority leader that all Senators may familiarize themselves with the contents of this proposed resolution. To that end, I have had copies placed on the desk of each Senator.

The ACTING PRESIDENT pro tempore. Without objection, the resolution will be placed on the Calendar.

Mr. MANSFIELD. Mr. President, for the information of the Senate, letters have been sent to the following departments, agencies, and individuals, relative to any papers which might be of value in the so-called Watergate Affair:

The Honorable Richard G. Kleindienst, Attorney General of the United States, who has most graciously replied, saying that he would make all his information available.

The Honorable Patrick L. Gray III, of the Federal Bureau of Investigation, who said that the Attorney General spoke for him.

The Honorable Earl J. Silbert, Principal Assistant U.S. Attorney, U.S. District Court House, who just acknowledged receipt of the letter.

The Honorable Elmer B. Staats, Comptroller General of the United States, who also replied.

To the Republican National Committee, Committee To Reelect the President, Stanley Ebner, general counsel.

The Honorable Richard Helms, Central Intelligence Agency.

The Honorable John W. Dean III, Counsel to the President.

The Honorable Maurice Stans, chairman of the Finance Committee to Reelect the President.

ADDITIONAL COSPONSORS OF A RESOLUTION

SENATE RESOLUTION 59

At the request of Mr. HUDDLESTON, the Senator from Nebraska (Mr. CURTIS), the Senator from Kansas (Mr. DOLE), and the Senator from North Dakota (Mr. YOUNG) were added as cosponsors of Senate Resolution 59, relating to the freight car shortage.

ANNOUNCEMENT OF HEARING ON S. 7

Mr. RANDOLPH. Mr. President, on behalf of the Senator from California (Mr. CRANSTON), I announce, for the information of Senators, that the Subcommittee on the Handicapped, of which I am chairman, of the Labor and Public Welfare Committee, will resume hearings tomorrow, Tuesday, at 9:30 a.m. in room 4232 Dirksen Building on S. 7, the Rehabilitation Act of 1972. Our sole witness will be Mr. Stephen Kurzman, Assistant Secretary for Legislation, Department of Health, Education, and Welfare. The prior hearings were held on January 10, 1973.

Immediately following the hearing, at approximately 11 a.m., there will be a subcommittee executive session to consider S. 7.

ANNOUNCEMENT OF HEARINGS ON FEDERAL AID HIGHWAY ACT

Mr. BENTSEN. Mr. President, on January 23, I announced that the Senate Subcommittee on Roads, which I have the privilege to chair, would hold hearings on the Federal Aid Highway Act on February 7, 8, 15, and 16.

Since that time, we have been scheduling a list of witnesses representing a broad range of viewpoints to discuss this bill and future directions in the highway program. I do not believe that any group can claim that its viewpoint is being slighted.

We have scheduled witnesses representing citizens' groups, professional and trade associations, conservation and environmental groups, and all levels of government.

The issues which the subcommittee will consider this year are critical to the future scope and direction of Federal activities in transportation. The controversy surrounding last year's highway legislation, plus the fact that Congress was unable to enact a bill in 1972, make it essential that we conduct a thorough discussion of all questions relating to the highway program.

I am fully cognizant that States, including my own, are rapidly depleting their Federal-aid highway funds. But I do not feel that we should act without reviewing the total highway program. The program must continue, but it must be continued as a Federal activity responsive to contemporary needs.

Mr. President, at this point I ask unanimous consent to insert a copy of the witness list in the RECORD.

There being no objection, the list was ordered to be printed in the RECORD, as follows:

COMMITTEE ON PUBLIC WORKS, SUBCOMMITTEE ON ROADS, U.S. SENATE

HEARINGS ON PROPOSED HIGHWAY LEGISLATION

Witness List

Wednesday, February 7

1. Honorable Claude S. Brinegar, Secretary, Department of Transportation.
Accompanied by:
Honorable Ralph R. Bartelsmeyer, Acting Administrator, Federal Highway Administration.
Honorable Frank C. Herringer, Administrator-designate, Urban Mass Transportation Administration.
Mr. John W. Barnum, General Counsel, Department of Transportation.

2. Honorable Robert Docking, Governor, State of Kansas.

3. Mr. Daniel J. Hansen, Executive Vice President, American Road Builders' Association.
Accompanied by:
Mr. Ray W. Burgess, Director of Public Works, ARBA, Baton Rouge, Louisiana.
Mr. Eugene M. Johnson, President, Asphalt Institute, College Park, Maryland.
Mr. J. L. Cone, President, ARBA Contractors Division, Tampa, Florida.

2:00 p.m.

1. Mr. L. P. Gilvin, Past President, Associated General Contractors, Amarillo, Texas.
Accompanied by:
Mr. Dan. P. Shepherd, Chairman, Highway Division, Atlanta, Georgia.
Mr. Ben M. Hogan, Chairman, American Association of State Highway Officials, Little Rock, Arkansas.

2. Mr. Brock Evans, Director, National Sierra Club, Washington Office.
Accompanied by:
Dr. Robert Burco, International Transportation Consultant for Sierra Club.

3. Mr. Robert Kenna, Counsel, National Wildlife Federation.

4. Mr. Francis Francois, President, National Association of Regional Councils.

Thursday, February 8, 10:00 a.m.

1. Senator Edward M. Kennedy, Massachusetts.

2. Senator Lowell P. Weicker, Jr., Connecticut.

3. Representative Glenn Anderson, California.

4. Senator Richard S. Schweiker, Pennsylvania.

5. Representative John P. Saylor, Pennsylvania.
Accompanied by:
Mr. Robert Dilkes, Director, Route 219 Association.

6. Mr. Joseph B. Creal, Executive Vice President, American Automobile Association.
Accompanied by:
Mr. John de Lorenzi, Managing Director, Public & Government Relations, AAA.
Mr. Charles N. Brady, Director, Highway Department, AAA.

7. Mr. Theodore Kheel, Advisory Board, Highway Action Coalition.
Accompanied by:
Mr. John Kramer, Executive Director.

2:00 p.m.

1. Mr. Clark McClinton, Past Chairman, National Limestone Institute.
Accompanied by:
Mr. Robert M. Koch, President.

2. Mr. William A. Brensahan, President, American Trucking Association.
Accompanied by:
Mr. Edward Kiley, Vice President.

3. Mr. Anthony Athens, Jr., Chairman, Sierra Club, South Texas Group.
Accompanied by:
Mr. Boone Powell, Architect.

4. Mr. John Lagomarcino, Director, Division of Special Programs, National Recreation and Park Association.
Accompanied by:
Mr. Barry Tindall, Senior Associate.

5. Mr. Sam McDaniel, representing the Texas Highway Department.
Accompanied by:
Mr. Frank Bennack, Publisher, San Antonio Light.

Thursday, February 15

10:00 a.m.

1. National Governors' Conference.

2. Mr. William J. Ronan, President, Institute for Rapid Transit and Chairman, Metropolitan Transit Authority of New York City.

3. Mr. Ralph Tabor, Director of Federal Affairs, National Association of Counties.
Accompanied by:
Mr. Dan Mikesell, Supervisor, San Bernadino County, California.

4. Mr. D. Grant Mickle, President, Highway Users Federation.

5. Mr. Robert Gallamore, Director of Policy Development, Common Cause.

2:00 p.m.

1. Honorable William D. Ruckelshaus, Administrator, Environmental Protection Agency.

2. Mr. Harry Hughes, Director, Maryland Department of Transportation.
Accompanied by:
Mr. Norman Clapp, Wisconsin.

3. Mr. Louis de Moll, Vice President, American Institute of Architects.

4. Mr. Charles Webb, President, National Association of Motor Bus Owners.

5. Mr. Franklin Kreml, President, Motor Vehicle Manufacturers Association of U.S., Inc.

Friday, February 16

9:30 a.m.

1. Mr. Manuel Carballo, Deputy Administrator for Transportation, New York City, National League of Cities and U.S. Conference of Mayors.
Accompanied by:
Larry Snowhite, Special Assistant, National League of Cities.

2. Mr. Tom Airis, President, American Association of State Highway Officials.
Accompanied by:
Mr. Henrik E. Stafseth, Executive Director of AASHO.
Mr. David Stevens, Chairman, Special Committee on Federal Aid Programs, AASHO.

3. Mr. Donald Spaid, Assistant Director of Planning and Zoning, Indianapolis, Indiana.
Accompanied by:
Mr. Albert Massoni, Director of National Affairs, American Institute of Planners.

2:00 p.m.

1. Honorable Ralph Poston, State Senator, State of Florida; Honorable Brown Ayres, State Senator, State of Tennessee, National Legislative Conference.
Accompanied by:
Mr. Michael Dye, Special Assistant, National Legislative Conference.

2. Urban Environment Conference, Inc.

3. Mr. Walter Jaenicke, Director, National Forest Products Association.
Accompanied by:
Mr. W. D. Hagenstein, Executive Vice President, Industrial Forestry Association, Portland, Oregon.

4. Mr. Irwin Hensch, President, American Public Works Association.

ADDITIONAL STATEMENTS

DEROGATORY REMARKS ABOUT THE PRESIDENT

Mr. GOLDWATER. Mr. President, during the months of the recent presidential campaign I kept as complete a file as I could of the things written or said about President Nixon in a deroga-

tory, misleading, and often false way. I did this because from the experience I had in 1964 I wanted to be able to show the public just what a man is subjected to by elements of the press and media that do not happen to agree with his philosophy.

I mailed out some ten thousand of these at my own expense to a list of people across our country, and the response has been overwhelming and surprising. The list I submitted to these people is only a portion of my files, but thinking that Members of Congress and others who might read the CONGRESSIONAL RECORD would care to see this list, I ask unanimous consent that the paper be printed at this point in my remarks.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

VIETNAM WHITE PAPER—INTRODUCTION

For four agonizing years, Richard Nixon has stood virtually alone in the Nation's capital while little, petty men flayed him over American involvement in Indochina. For four years he has been the victim of the most vicious personal attacks. Day and night, America's predominantly liberal national media hammered at Mr. Nixon, slicing from all sides, attacking, hitting and cutting. The intellectual establishment—those whose writing entered America *into* the Vietnam war—pompously postured from their ivy hideways, using their inordinate power to influence public opinion to malign the President. And over all those years, there were the incessant attacks from the United States Congress—the low-motivated partisan thrusts from many who envied the President's office and many more who cynically molted their hawk's feathers for those of the dove.

No President has been under more constant and unremitting harassment by men who should drop to their knees each night to thank the Almighty that they do not have to make the same decisions that Richard Nixon did. Standing with the President in all those years were a handful of reporters and number of newspapers—nearly all outside of Washington. There were also the courageous men of Congress who would stand firm beside the President. But most importantly there were the millions upon millions of quite ordinary Americans—the great Silent Majority of citizens—who saw our country through a period where the shock troops of leftist public opinion daily propagandized against the President of the United States. They were people of character and steel.

What follows is a partial record of how wrong and how harsh were the critics when things were most difficult. The overwhelming evidence supports the observation that pessimism and gloom were the watchwords of the wordsmiths and electronic media commentators. Marking the reportage of Vietnam is the unavoidable impression that the worst of everything was to be found and prominently reported. And especially in the most powerful quarters of the mass media, there was rarely an indication of simple trust in what the leader of the free world was doing, or a hopeful tone that the partisans and cynics just might be wrong and the President right.

Through four years of distorted television reports—such as those of CBS during the Cambodian incursion and that of ABC during the Laotian action—the American people were, over the great preponderance of time, given negative and disheartening reports of Vietnam progress. NBC's Phil Brady often echoed what seemed to be an anti-American script. John Hart of CBS traveled to Hanoi and brought back hundreds of feet of Communist-sanctioned film to show the American public. All networks have used countless reels of enemy film—and though fairly labeling it—the steady process of the display of obvious enemy propaganda cannot but have an eventual toll.

And the media has tended to believe the worst about the American presence—remember the "destroyed" dikes? Each time it was something new—the dikes, the civilians, the hospital, the neutral ships and always the truth took longer to catch up with the distortions.

Now, through the worst gauntlet of opprobrium and malicious defamation in American history, the President has brought us to a successful end in Indochina. The guns are silent, and our men will be coming home to stay. History will record in the generations to come what only a few have seen first hand: that in this most darkening crisis, Richard Nixon thought more of his country than himself, bringing his skills, his heart, and the extra dimension of a rare and courageous human being.

SO WRONG FOR SO LONG

The New York Times

"The American bombs falling on . . . North Vietnam . . . have dimmed prospects not only for peace in Indochina but for the wider detente for which all mankind has prayed." Editorial, December 30, 1972.

Tom Wicker—"The answer can only be that he has no plans to end the war, much less win the peace, that Vietnamization by itself is not and cannot be such a plan, . . ." May 3, 1970.

"It is not going to be easy to explain away a North Vietnamese military success this time." April 4, 1972.

". . . the President—by imperial fiat—has placed the nation in hazard of the gravest confrontation with the Soviet since the Cuban missile crisis of 1962. . . . this is failure on a grand scale." May 12, 1972.

". . . why *should* bombing a people make them want to deal in good faith?" December 26, 1972.

James Reston—"This (the bombing) is war by tantrum, and it is worse than the Cambodian and Laotian invasions . . . December 27, 1972.

"Accordingly (after Cambodia), he is now in a dangerous situation, both at home and abroad." May 8, 1970.

"There is something, not only illogical, but almost dishonorable in his (the President's) present strategy." February 28, 1971.

Anthony Lewis—"(Nixon and Kissinger) . . . have no options except more of the destruction that everyone knows is morally outrageous and politically useless." April 10, 1972.

"The North Vietnamese say they are clearing American mines from the Haiphong harbor as planes drop them . . ." May 18, 1972.

". . . the elected leader of the greatest democracy acts like a maddened tyrant . . ." December 30, 1972.

"Even with sympathy for the men who fly American planes, and for their families, one has to recognize the greater courage of the North Vietnamese people . . ." January 6, 1973.

". . . they (the enemy) are a people of extraordinary determination and bravery." January 8, 1973.

The Washington Post

"He has conducted a bombing policy . . . so ruthless and so difficult to fathom politically as to cause millions of Americans to cringe in shame and to wonder at their President's very sanity." Editorial, January 7, 1973.

Joseph Kraft—". . . the more the President's policy becomes known, the more the support for it wanes." March 3, 1971.

". . . To anybody who tells them (the enemy) to negotiate, they can say that the United States betrays secret dealings for internal political advantages. In these conditions, the negotiating prospect is now virtually nil." January 27, 1972.

"But President Nixon's action does put in hazard the summit meeting with the Russians. . . . And it washes out the rapport Mr. Nixon established with the Chinese leaders in what he called 'the week that changed the world.' " May 11, 1972.

"It is not wrong to say that if the war is not ended in the next few months, it will probably not be ended in the next few years." June 4, 1972.

". . . we have been shamed as a nation, . . ." November 26, 1972.

". . . Mr. Nixon called on the bombers—an action, in my judgment, of senseless terror which stains the good name of America." December 24, 1972.

Tom Braden and Frank Mankiewicz—"Vietnamization was always doubtful. . . . Now the failure is plain through all of Indochina." June 2, 1970.

St. Louis Post Dispatch

"Over and over again Mr. Nixon has tried to bomb Hanoi into submission. It has not worked before and it will not work today." Editorial, December 19, 1972.

CBS News

Dan Rather—"The scheduled summit in Moscow next month is clearly in danger. None of these are pleasant thoughts." May 5, 1972.

Eric Sevareid—"It is no longer a question of repelling the Hanoi general offensive, but of holding it. On present evidence, there is no prospect of driving them out of the provinces they have taken . . ." May 4, 1972.

"I would suspect that the summit will not come off." May 8, 1972.

"The realistic argument is whether this new gamble for peace in Vietnam will not, in itself, set off unpeaceful moves in Europe or the Mideast out of Russia's need to save face if nothing more." May 9, 1972.

"The bad news in the next few days could be the fall of Kontum rated as probable here and the fall of Hue rated as possible. . . ." May 17, 1972.

Charles Collingwood—". . . Certainly the Moscow summit meeting, from which so much had been expected, is now in jeopardy. . . ." May 9, 1972.

Marvin Kalb—"One casualty of the President's mining and blockade may well be his upcoming summit to Moscow." May 9, 1972.

NBC News

David Brinkley—"The best settlement would be to get out, . . . the American people long ago decided the war was a mistake, . . . the American people are mature enough to accept a bad settlement. . . . it is hard to see any good reason for delaying the American withdrawal from Vietnam." December 19, 1972.

John Chancellor—"The summit is in jeopardy today." May 8, 1972.

NBC News

Harry Reasoner—"The news . . . about the Vietnam negotiations breaking down was very scary and depressing . . . Dr. Kissinger's boss has broken Dr. Kissinger's word. It's very hard to swallow . . . backing off from a cease fire is a weight and comes very close to a breaking of faith, with Hanoi maybe, with Americans more certainly." December 19, 1972.

Howard K. Smith—". . . as a, I hope, judicious commentator, I doubt the wisdom of what has been done." May 10, 1972.

Newsweek

"The Specter of Defeat." Cover title, May 15, 1972."

". . . the Nixon Administration suddenly found itself faced with the specter of defeat in Vietnam."

". . . the President must have been aware that he was running grave risks."

". . . Mr. Nixon now seemed to be contemplating a massive military counterstroke—a move that could scuttle the sum-

mit and severely damage his image as a President whose strongest suit was foreign policy."

". . . many U.S. military men expected (Kontum) to fall soon, opening the way for the North Vietnamese to cut South Vietnam in half."

". . . a blockade of Haiphong . . . would almost certainly bring an immediate cancellation of the Nixon visit (to Russia)."

"The North Vietnamese offensive has already dealt a serious blow to the so-called Nixon doctrine."

". . . the weight of evidence over the years suggests that much of America's bombing has been in vain." May 15, 1972.

Time

"The Big Red Blitz."—Cover title, May 15, 1972.

". . . it is universally recognized that the Communists are able to keep fighting at a brisk pace for many months."

"Blockading the ports of Haiphong and other entry ports . . . would risk direct conflict with Soviet and Chinese vessels." May 15, 1972.

Others

Mary McGrory—". . . (President Nixon) will negotiate with anyone but the North Vietnamese and will go anywhere but Paris in search of peace." *Washington Evening Star*, October 24, 1971.

Carl Rowan—"So Nixon decided—and make no mistake about it—that he would risk war with Russia and/or China rather than accept defeat and 'insolence and insult' from . . . North Vietnam." *Washington Evening Star*, May 12, 1972.

Milton Viorst—"So what's left? I hate to use a dirty word, but what's left may be the nukes. . . ." *Washington Evening Star*, May 6, 1972.

Congressional criticism

Reaction to Mining Decision—As compiled in *Congressional Quarterly*, May 13, 1972

Mike Mansfield—(D Mont.)—"What we are witnessing is not a shortening of the war . . . but rather a lengthening of it. . . ."

Vance Hartke—(D Ind.)—The President "has thrown down the gauntlet of nuclear war to a billion people in the Soviet Union and China. . . . Armageddon may be only hours away."

George McGovern—(D S.D.)—"The President must not have a free hand in Indochina any longer. The nation cannot stand it."

Edward M. Kennedy—(D Mass.—"(It is) a senseless act of military desperation by a President incapable of finding the road to peace."

Edmund S. Muskie—(D Maine)—"By taking these actions, the President is jeopardizing the major security interests of the United States. . . ."

Hubert H. Humphrey—(D Minn.)—"It is fraught with danger and will not contribute to the settlement of the war."

John G. Dow—(D N.Y.)—"The President is taking the risk of exterminating our civilization for a shabby purpose."

Bella S. Abzug—(D N.Y.)—"There are those, and I join with them, who intend to introduce a motion to impeach the President. . . ."

General congressional criticism

Senator Edward Kennedy—". . . events suggest a return to the same old war."

". . . we cannot read about the heavy bombing . . . without a deep and despairing sense that peace is not at hand."

". . . Congress must and will act on the peoples' mandate for peace." December 27, 1972, *New York Times*.

Senator George McGovern—"If we continue under the Nixon policy, we're not going to see our POW's again." June 14, 1972, *Buffalo Evening News*.

"(President Nixon's decision to mine the harbors of North Vietnam is) a desperate attempt to save political faces. . . . It won't work." May 12, 1972, *Detroit News*.

"We are watching the Nixon Administration strike out in a helpless panic as they see their Vietnamization program crumble before their eyes." April 13, 1972, *Speech*, Boston State College.

Senator Adlai Stevenson III—"Mr. Nixon's policy is to defend a corrupt military regime. It's a policy for staying in . . . (and) a prescription for more of the same . . . It has already proved Vietnamization wrong." April 14, 1972, press release.

Senator John Tunney—"This is the tragedy of the President's policy of escalation—it will make it much more difficult to achieve a modus vivendi with the Soviet Union and it will keep Americans in Vietnam indefinitely fighting and dying." CONGRESSIONAL RECORD, volume 118, part 14, page 17569.

IN PRAISE OF SANDRA BEVERLY SANCHEZ, 1973 NATIONAL POSTER CHILD FOR THE EPILEPSY FOUNDATION OF AMERICA

Mr. MONTOYA. Mr. President, recently I had the pleasure of meeting a bright-eyed, freckle-faced girl of 10, who came to our Nation's Capital to participate in a simple, yet significant, ceremony. Representing 4 million Americans today in the United States and bringing with her their hopes for tomorrow, Sandra Beverly Sanchez of Albuquerque, N. Mex., came to Washington as the 1973 National Poster Child for the Epilepsy Foundation of America.

The ceremony I have spoken of was the presentation of the Candle of Understanding to Sandy by last year's poster child. To some, this candle would merely seem to be a waxen object. To the 4 million Americans who struggle with epilepsy, it is symbolic of a dawning light now being shed on a problem as old as humanity itself.

As early as 400 B.C., Hippocratic collection of writings argued the causes of epilepsy, then referred to as "the Sacred Disease." The problem was evident. The solution was elusive. Many thought it required a cure not human, but divine. Others believed a deity had sent it. A few in the medical field believed the cure to be physical, not spiritual. However, no cure, whether medicinal or spiritual, was found.

The Romans called epilepsy the "morbus comitalis." They attributed the name to the fact that an epileptic attack use to spoil the day of the comitia, the assembly of the people.

Three great epileptics—Julius Caesar, Mohammed, Lord Byron—were founders respectively of an empire, a religion, and a school of poetry.

More recent are the well-known figures who have been prominent since our Nation's birth. George Washington's stepdaughter suffered her first epileptic attack at age 12. Physicians prescribed "iron rings" and "fit drops." She died at age 16.

At the time Mrs. William McKinley entered the White House as First Lady, she had experienced frequent seizures for 25 years.

Mark Twain placed his epileptic daughter in a sanitorium with the hope of improving her health and ending her seizures. Far from being "cured," she later had a seizure while bathing in a cold tub and died.

The list of notable figures affected by this problem is endless. We now marvel at the ineffective cures used in the past, since medication has often brought total relief for persons in the last few decades. We laugh at the "iron rings," the "fit drops," the charges of witchcraft.

But history laughs at us today in mockery, for the superstitions and ignorance about epilepsy in the past are still being perpetuated today. Consider the following facts:

In 1965, three States still had statutes prohibiting marriage of an epileptic.

This same year revealed that 14 States had sterilization laws applicable to epileptics. This number has now been reduced to nine.

Five States cited epilepsy as a basis for annulment of adoption.

Although it may not necessarily be the only reason for commitment, 17 States mention epilepsy in their statutes on admission to State institutions.

Six States have licensing standards applying specifically to epileptics. In one State, the decision to deny a driver's license is not subject to appeal.

Although the majority of persons with convulsive disorders are now completely controlled by medication, such as Sandy, many State laws are based on medical and genetic concepts long outdated. As a result, this bias frequently prevents education, finding jobs, driving, and obtaining insurance protection. Society has continued to view epilepsy out of perspective, causing children who have a seizure in class to be viewed as a "freak," thus affecting their relationship with peers.

It was through the need for human understanding, adequate medical facilities and care, and a basic reaction of indignity to the social injustices suffered by epileptics that the epilepsy movement began. The movement itself celebrates its 75th anniversary this year; the Epilepsy Foundation of America, which merged with previous epileptic foundations, is in its fifth year of operation.

It is through this organization that a poster child such as Sandy has received such an exciting opportunity. The daughter of Mrs. Nettie Sanchez of Albuquerque, Sandy has had this disorder since 1970. However, her seizures are fortunately completely controlled by medications. She is the only one of Mrs. Sanchez' four children who has epilepsy.

Sandy will now travel throughout the United States, visiting many of the 142 nationwide epilepsy organizations. She will also meet many stars, Governors, and citizens. It is through her that understanding of the problem of epilepsy can begin. For her unselfish efforts reflect love. And love is the beginning of knowledge just as the fire from her candle is the dawning of light and understanding.

And I sincerely hope that through this understanding, the "bill of rights" as viewed by those afflicted with epilepsy; namely, freedom from all social, legal, medical, employable, and legislative inequities—will become a permanent and widely practiced reality.

JUSTICE FOR FARAH WORKERS—BISHOP METZGER'S LETTER

Mr. KENNEDY. Mr. President, one of the most eloquent statements on the current strike of several thousand workers of the Farah Manufacturing Co., whose largest plant is in El Paso, Tex., is contained in a letter sent by Bishop Sidney Metzger, of El Paso, to all Catholic bishops.

Bishop Metzger has never before taken a position in an industrial dispute, but after months of study he felt compelled to write this letter last fall, summarizing the facts about the situation and his views on the Farah strike. It is a thorough, balanced, and objective analysis, dealing with numerous different aspects of the strike and the immensely important principles of social justice and compassion that are at stake.

In light of the growing national concern over the issue, I believe that the letter will be of interest to all of us in Congress, I ask unanimous consent that it be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

EL PASO, TEX.,
October 31, 1972.

YOUR EXCELLENCY: Recently one of our Bishops sent me a letter through his diocesan office asking for information concerning the strike at the Farah Manufacturing plant in El Paso. Because of a nationwide boycott of Farah products by the Amalgamated Clothing Workers of America the strike has assumed nationwide importance and its effects are felt in a number of cities throughout the nation. The Bishop's Office wrote that he needed some guidance from people on the scene as to the problems. The following questions were asked in the letter:

(1) Do you feel the Company is acting in an unjust manner in this strike? Can you point out specific and verified instances of this?

(2) Has anyone toured the plants of Farah? What were the conditions?

(3) Is the Farah pay scale equitable with other plants in the area? Is the pay adequate to live on?

(4) How is this issue defined by the people concerned in regard to the dignity of each party—the strikers and the Company?

(5) Is the case strong enough that you recommend the Bishop to make a formal request to a retail outlet not to reorder?

My answer to these questions is contained in the following pages. If you are asked about the merits of the strike I hope this information may be useful.

Yours in Christ,

S. M. METZGER,
Bishop of El Paso.

[The above letter, in response to an inquiry from the Bishop of Rochester to the Bishop of El Paso, and the explanatory letter from the Bishop of El Paso which follows, was sent to all Roman Catholic Bishops in the United States.]

EL PASO, TEX.

DEAR FATHER: In reply to your letter I must give you pertinent information concerning the Farah situation in El Paso, which is difficult and complicated.

Farah has always been and is now bitterly and adamantly opposed to labor unions. The article in the New York Times, Sept. 11, 1972, in reference to the president of Farah states: "And he swore that Farah would never be unionized." This statement is correct and summarizes Farah's attitude which has been known in El Paso for years. With this extreme attitude of opposition Farah finds it well nigh impossible to be objective and to recognize that the worker has the right to collective bargaining and join a union. The Company is convinced that it is doing wonders for the worker and that a union would be detrimental to the worker and to the Company. I feel that the Company is acting unjustly in denying to the worker the basic right to collective bargaining. We know that these matters are decided by means of Federally sponsored representational elections and the Farah Company uses all possible means to block such elections in their plants. Let the workers decide if they want a union or not. If all is so beautiful and ideal as the Company publicly proclaims why should they fear an election?

Farah Company presents a public image which appears attractive and is accepted by many in the El Paso Community who are sincere but have no knowledge of the requirements of social justice. Farah boasts that he has thousands of "happy workers" in his plant. However there have been complaints from workers for a number of years and the present strike is probably a culmination of these complaints.

I know that for the past five years complaints were made by Farah workers to their parish priest. This you will understand when you realize that nearly all Farah workers are humble Mexican Americans who must earn their bread by hard work and who often have a way of coming to their parish priest with personal problems. And because most of the workers at Farah are women the most frequent complaints come from them. During the years they have complained of unfair treatment that they couldn't go to their personal doctor because the Company wouldn't want them to leave the plant. Nurses would disclose personal intimate physical problems and were careless about keeping professional confidences.

There were complaints about the drastic demands for production. This was explained by a worker who has been with the Company 14 years. When she started she was required to do her particularly assigned work in order to produce 12 bundles of slacks per day (12 slacks per bundle) and was paid the minimum wage at that time of $1.25 per hour. Later her daily quota was raised to 25 bundles (i.e. 300 slacks) per day and received $2.15 per hour, which seems to be the top pay for her kind of work. She explains that the great majority of workers make $69.00 per week, which is take-home pay after deducting social security, etc. At the present moment her assignment is to sew belts on the finished slacks. The daily quota is 25 bundles of belts (120 belts in each bundle). The quota then amounts to 3000 belts per day; in an 8 hour work day this means the girls have to sew on 6 belts per minute, and even this would amount only 2880 belts per day. The girls say that it is physically possible to sew on only 5 belts per minute, even with the modern machines they operate. As long as they cannot sew on 6 belts per minute they cannot get a raise and their wages are frozen at that point. The girls say that it is physically impossible for them to sew on more than 2760 belts per day. The Company tolerates this but they do not get a raise unless they can produce the daily quota of 3000. In order to reach this quota they would have to work an extra hour, which would necessitate to skip their lunch hour. While the quota of 2760 belts is tolerated the Company will dismiss a worker who in their opinion falls too far below 2760. It has been said that the production demands can be set by the Company as high as they want them and they can fire the worker who cannot stand the strain physically. Workers have said that they are treated as production machines and not as human beings. They also said that wages increase only when and if the Company wants. Women have also complained that the maternity benefits were far from adequate and that when they returned to work they would lose their position on the pay scale and start as beginners.

It seems to me that there are some flagrant defects in the Farah plants as they are presently operated. Perhaps the most flagrant is that there is no job security; The Company can fire anyone anytime and the worker has no appeal. A second very serious defect is that there are no negotiated production standards so that the workers can have a say how much they can produce and are not treated like machines. There should also be negotiated wage increases according to a definite schedule. There should be better maternity insurance and negotiated leaves for illness etc. and workers should be able to return to their same jobs and same rate of pay.

Farah Company has an impressive list of benefits which look good on paper. At closer scrutiny, however, these like the Maternity insurance are tokens. I have before me a photocopy of "Your Retirement Benefits" addressed to a worker. It states "This is a total monthly retirement income of $234.50," which looks fine. But $214.50 comes from an estimated amount of Social Security and the monthly retirement check from Farah amounts to $20.00. Nothing is explained about what the actual retirement age is or how many years of work with Farah are required for retirement benefits.

I hope I am not in error when I say that job security for the workers, negotiated production standards, negotiated wage increases according to a definite schedule, adequate maternity insurance and leaves for illness are all in accord with the principles of social justice. All these are lacking in the present Farah Company and these serious defects can be remedied by collective bargaining.

The Farah Company boasts that they have over 8000 happy workers who will not strike, will have no part of a labor union and are satisfied with their employment as it is. It is true that many workers are satisfied and do not wish to be disturbed because they are convinced that everything is wonderful. This is a strange situation and there are a number of reasons why it exists. In their simplicity many do not know that their situation could be improved and the Company is not the one to inform them but is actually taking advantage of their simplicity and keeps reminding them that they never had it so good. However it should also be noted that without job security and with the high production demands workers live in fear of being dismissed and left without a job if their output falls short of their production quota. Also the Company exercises constant supervision to be sure the workers do not complain to others but say the right thing when outsiders visit the plant. This brings me to your question whether anyone has toured the plants of Farah and what were the conditions.

When the strike started and the Farah Company became aware that the local parish priest and the bishop gave their approval to the strikers, a delegation of 22 supposedly tried and true representatives from the Company called at the parish rectory. They told the pastor to invite me to the Farah plant the next day for lunch. I would be welcomed by the workers and entertained by mariachis (which is a Mexican band). This invitation of course I did not and should not accept for obvious reasons. The representatives tried to dissuade the parish priest from supporting the strike but he stood his ground and gave the reasons for his action. Later one of the representatives, a lady who is trusted by the Company, returned alone and confided to the priest that her conscience bothered her because she realized that not all is as it should be with the

workers and the Company. Recently a member of the local office of the Texas Employment Commission told about their inspection tour of the Farah plant. They were not satisfied because they felt the workers are not treated fairly but like machines. They were not allowed to talk to the workers at random but certain individuals were selected by the Company and apparently been told what to say. A Company official was always present. So there you have the reason why I did not tour the Farah plant. It is well known that there is nothing wrong with the physical plant itself because it is known to be modern, clean and comfortable. But an inspection tour is useless as far as the issues of social justice are concerned. It is known that a number of men who held higher positions in Farah Company left because "they couldn't take it" and I personally know a young well paid executive who left the Company for other employment because in conscience he could no longer remain with it.

You ask the question: "Is the Farah pay scale equitable with other plants in the area? Is the pay adequate to live on?"

Farah pays about the same as other non-union apparel plants and the excuse is frequently given that if a company pays the prevailing wage scale in the area it is paying a living wage. The fallacy in this is that the non-union labor market in the area is very depressed and a living wage simply does not prevail. The need for social justice in this area is not restricted only to Farah. Clothing is El Paso's number one industry and according to a recent economic report by the local Chamber of Commerce 15,000 workers are hired and sales volume is highest totalling $220 million annually. The average annual income of all clothing employees is only $4300. Subtracting the highly paid supervisory and managerial positions which are well paid it is figured that the great bulk of clothing workers i.e. "the little people" earn closer to $3500 yearly. If you recall, above I gave information from workers that the great majority of Farah workers receive $60.00 per week (take home pay) which for 52 weeks amounts to $3588.00. It is interesting to note that in the Chamber of Commerce economic report the only industrial classification drawing lower pay than clothing workers are listed under a catch-all listing as "others," although clothing is El Paso's number one industry. In comparison, Chamber of Commerce statistics show that petroleum workers earn an average of $7500 yearly, metal workers earn $7200 yearly, food processing employees average $6100. The Amalgamated Clothing Workers of America who are seeking a contract with Farah have contracts with three apparel manufacturers in El Paso. These three are Levi Strauss, Hortex Incorporated and Tex-Togs. Levi Strauss is national but Hortex Incorporated and Tex-Togs are small local companies, much smaller than Farah. Work for which workers at Farah receive $69.00 per week take home pay, union workers receive $102.00 per week take home pay, which sounds more like a living wage. If these smaller plants can live with a union contract and prosper why is it so impossible for gigantic Farah to do the same?

When you ask is the annual pay of $3588.00 at Farah adequate to live on the answer is decidedly "no" in these days of high prices. A single person can get by on this amount but a married person with a family simply cannot adequately support the family with this amount. It about puts bread on the table. Some of our Mexican people have large families and they have serious problems. In terms of social justice $3588.00 is not an adequate living wage in our day for a family in El Paso.

I wonder if I get the full import of your fourth question: "How is this issue defined by the people concerned in regard to the dignity of each party—the strikers and the Company? The demands of social justice are to uphold the dignity of man, the dignity of labor and the right of the worker to a living wage. Farah may be in good faith but in their present operations it seems they do not understand these demands and are ignoring them. The Mexican Americans have a legitimate pride and are very conscious of their "dignidad." And they consider many of Farah's practices an insult to their "dignidad."

In the tension of the strike itself there have been recriminations on both sides as there usually are in strikes. Farah Management invoked an old Texas law against "mass picketing" which required that pickets should remain at least 50 feet apart. Misdemeanor charges were filed against more than 700 strikers. In the meanwhile Federal Courts struck down this law as unconstitutional and the misdemeanor charges became meaningless. There was a story that Farah had used trained police dogs to menace the pickets and that the Farah Management later was forced to "call off the dogs" following an out-of-Court agreement. There has been no violence nor destruction of property here in El Paso and I hope there will never be. Whatever other incidents there may be these do not touch on the issues of social justice which are at stake here.

Resentment by workers against Farah has been building up for at least five years. Most of the information I am giving in this letter came over the years from the people and when the representatives of the Amalgamated Clothing Workers of America came this year they were not telling me anything new but only confirmed all or most of the complaints which I had heard before from the people and the parish priest. Farah apparently wasn't aware or didn't want to be aware that resentment was growing. But the fact that today over 3000 workers are on strike is evidence that both grievances and resentment are real. And by listening to the people over the years one gradually became aware that things at Farah were not actually as they were made to appear.

In reply to your question number 5: "Is the case strong enough that you would recommend the Bishop to make a formal request to a retail outlet not to reorder?" I answer: Yes, from my knowledge of the case here, I think it is strong enough to recommend to His Excellency that he make a formal request to a retail outlet not to reorder. The strike has assumed national importance and is supported by persons of national prominence. Our own "little people" in El Paso would be crushed if it were not for this national support. His Excellency will of course weigh what I have written and decide what he deems best.

With every good wish and blessing, I am,
Sincerely Yours in Christ,

S. M. METZGER,
Bishop of El Paso.

NEWSPAPER COMMENT ON PEACE IN VIETNAM

Mr. SCOTT of Pennsylvania. Mr. President, I ask unanimous consent that several editorials and columns from newspapers across the United States on President Nixon's accomplishments in bringing peace to Vietnam be printed in the RECORD.

There being no objection, the comments were ordered to be printed in the RECORD, as follows:

[From the Cleveland (Ohio) Plain Dealer, Jan. 24, 1973]

MR. NIXON'S FINEST HOUR

President Nixon in quiet exultation announced that "an agreement to end the war," "peace with honor," has been concluded.

All Americans join fervently in applauding the President's historic announcement which he worked so long to achieve against so many pressures at home and abroad.

The main conditions Mr. Nixon laid down are the same as they were in the Oct. 26, nine-point peace plan.

There will be a cease-fire starting at 7 p.m. Saturday.

All American prisoners of war will be freed in 60 days.

All American forces will be withdrawn in 60 days.

The people of South Vietnam will be able to peacefully decide their own future.

Not only will South Vietnam remain a partner in peace, but the United States will give economic assistance to North Vietnam.

Although all details have not yet been revealed, it is certain that Cambodia and Laos are included in the agreement.

There the details stopped, except that Mr. Nixon says Nguyen Van Thieu's government has been recognized as the sole legitimate government of the country, presumably with a boundary at the demilitarized zone on the 17th parallel.

If that has been won from the wily Hanoi Communists that knocks out one of President Thieu's major protests against the October peace plan.

But now comes the big question. Will all sides, especially Thieu's government and that of the North Vietnamese, do what must be done now, to turn an armistice into a genuine peace?

"The terms must be scrupulously adhered to," said the President.

The major powers—the Soviet Union, China and the United States—must by now have agreed behind the scenes that they will not supply any more wars such as have plagued Southeast Asia.

That is the key to this peace agreement. Mr. Nixon's relations with these powers, his visits to them and U.S. trade with those countries were an essential part of any peace agreement.

The cease-fire finally is a tribute to Mr. Nixon. His global poker game has paid off in the face of pressures of all kinds at home and abroad. For our 37th President, this has been his finest hour.

[From the Richmond News Leader, Jan. 24, 1973]

PEACE WITH HONOR

So sullen have we grown about the Vietnam War, so often have our hopes for its honorable conclusion been skunked, that when President Nixon made his announcement last night the leaps for joy throughout the nation were probably few. There has been too much impassioned verbal gassing and esoteric baloney spewed out about this war; the repetition of lies about it has understandably withered our capacity to detect the truth. Yet Americans persist in their particular affection for tragedies with happy endings. And the truth is that we finally have reached an apparently happy ending in Vietnam.

At this writing, the details of the agreement are not yet public: We do not know, for example, what arrangements have been made for the futures of Laos and Cambodia; we have no knowledge about policing provisions; we do not know whether the agreement legalizes the presence of North Vietnamese troops in South Vietnam. But we do know that the agreement gives the people of South Vietnam a chance to determine their own future, and a reasonable chance to continue living in freedom. For such certainties, we have the assurance of Richard Nixon—a diligent watchman of free peoples' liberties.

Mr. Nixon evidently has accomplished what his people elected him, and re-elected him, to do. He evidently is going to get us out of Vietnam, and bring our prisoners home, within 64 days—or within 68 days of his sec-

ond inauguration. That is considerably more quickly than George McGovern would have accomplished it (McGovern said the deed would be done within 90 days of his inauguration), but Mr. Nixon seems on the brink of doing it with honor. The President's achievement cannot be overplayed. He did it when his domestic enemies were sedulous and singularly successful in their efforts to prevent the mobilization of national detestation for the Communist enemy. He did it as President of a people accustomed to victory and speedy results—a people quickly exhausted, a people with little patience for the Oriental and Communist penchants for attrition and protracted conflict. He did it when many of the persons who should have supported him most enthusiastically had curled up in the corner like a sulky dog. He made up his mind and dug in his defenses and persisted. Now he has prevailed.

Prevailed in what? In preventing the conquest of a free people by barbarians. In defending the free Vietnamese, in arming them and training them, in giving them an opportunity henceforward to defend themselves. We can measure the success of the American effort by the fact that today 90 per cent of the South Vietnamese are not slaves to commissars from Hanoi. If America had not gone to South Vietnam and stuck it out, today every South Vietnamese would be in a concentration camp, or laboring for Communist bosses, or dead. If America had elected George McGovern two months ago, such a fate would await every South Vietnamese 86 days from now; like their counterparts in the Soviet Union, for example, they would face the oblivion of 10,000 Siberian nights.

This is a happy day—the first day in perhaps a decade that the prospect of peace with honor in Vietnam has seemed real. Now let us get our boys home. Let us have a satisfactory accounting of the missing. And let us remember that although the Vietnam War soon will end for us Americans, for the South Vietnamese it will not. Practically every prediction about the lack of staying power of the South Vietnamese has proved wrong. Yet they need our continued support. Having fought off relentless attack for 30 years, they will be understandably skeptical about the future of their country until they have been convinced that the agreement to be signed Saturday is not their ticket to the ash heap.

"We sit by and watch the Barbarian," wrote Hilaire Belloc. "We tolerate him. In the long stretches of peace we are not afraid. We are tickled by his irreverence, his comic inversion of our old certitudes and our fixed creeds refreshes us; we laugh. But as we laugh we are watched by large and awful faces from beyond; and on these faces there is no smile." Let us remember that during the peace to come, those unsmiling faces will continue to watch us. Let us rededicate ourselves to the principles of liberty that the American people—led by Richard Nixon—have served so well in South Vietnam.

[From the King Features Syndicate, Jan. 28, 1973]

OPTIONS LIMITED: NIXON PLAYED GOOD HAND WITH WHAT CARDS HE HELD

(By Jeffrey Hart)

It now appears that by his tactics during the last two months Richard Nixon has not only brought the American aspect of the war to a close, but, actually, sort of won it—that is, negotiated the agreements largely on his terms rather than Hanoi's. There has been a good deal of talk lately, not least from conservative columnists who ought to know better, about the "remoteness" of the President, his failure to see the press more or to contact leading congressmen, his failure to explain himself to the public and so forth.

But President Nixon's isolation at Camp David and his inaccessibility to the press are obviously part of his total calculation. Mr. Nixon's silence has served to create doubt. His negotiating adversaries have had no clue as to his ultimate intentions.

Mr. Nixon's next card has been a blank to them and they were free to inscribe upon it their worst fears. More bombing? Heavier bombing? The atom? Mr. Nixon deployed uncertainty as a powerful tactical weapon.

Mr. Nixon's performance is especially impressive, given the comparative weakness of his hand. He has been trying to end the war in a way that would not sell out the millions of South Vietnamese who clearly do not want to come under Communist rule, yet he has been limited in his options by the war-weariness of the Congress and much of the public.

He has, however, been an extremely tough negotiator. He said long before the election that he was setting no deadline—a la Mendes-France in 1954—for a settlement. He has been willing to wait and wait, taking all domestic and foreign heat, waiting until the terms were right.

But the crucial thing to notice about the much-decried bombing is its timing, which tells us much about Mr. Nixon.

Last October, Henry Kissinger and Le Duc Tho hammered out the broad outlines of a settlement. But as interpreted by Hanoi in the negotiations ending Dec. 18, some of the crucial provisions meant the following:

The international cease-fire inspection team was to be merely a token unit of 250 men, lacking both mobility and communications. This was a derisory interpretation of the "broad agreement."

There was no recognition of the de facto and indeed de jure division of Vietnam along the 17th Parallel.

Mr. Nixon's bombing began on Dec. 18, just hours after Le Duc Tho arrived back in Hanoi to report on the failure to reach an agreement with Dr. Kissinger. It began preemptorily, without any preliminary softening up of the heavy air defenses. And it went on, Hanoi bearing the full brunt, until the appropriate signals were received.

The bombing must have impressed Le Duc Tho and his colleagues, for, on Jan. 8, he led the parade to the current and successful negotiations which ratified Mr. Nixon's interpretation of those first broad agreements.

We are to have a genuine inspection force; the existence of the DMZ is recognized. And, for good measure, the bombing—plus the existence of U.S. planes in Thailand and elsewhere in the area—must be taken into account by Hanoi in any of its future calculations.

The world being what it is, there is great reassurance in having a President capable of dealing with the realities skillfully and with dispatch.

[From the Baltimore Sun, Jan. 30, 1973]

HIS CRITICS CANNOT ABIDE THE PRESIDENT'S TRUCE

(By Nick Thimmesch)

WASHINGTON.—Peace is barely with us and already the recriminations begin. The kind of postmortem we have on the Vietnamese ordeal will help determine our credentials as a world power in the years ahead. And there are years ahead, and a national life for the United States after Vietnam. But, when the inevitable debate is over, it is likely that most Americans will sensibly conclude that the methods and decisions of President Nixon and Henry A. Kissinger, Mr. Nixon's national security adviser, were the best way to a cease-fire and peace.

Those who dislike the President could not wait to snipe. Averell Harriman, who negotiated the failed Laotian settlement a decade ago, expressed relief at the news, but proclaimed that Vietnam could have been settled in 1969. Some liberal critics and writers, writhing for self-justification, darkly suggest that President Nixon was the heavy and Dr. Kissinger the hero in the Vietnamese story.

But this is the same soft-minded gang that helped usher us into the Vietnamese tragedy. These are the kind of people that George Orwell once described as eager to play with fire without really knowing what fire is.

Mr. Nixon made tough decisions on Vietnam and knew what they meant: the Cambodian invasion; the Laotian "incursion"; the mining of Haiphong and renewed bombing of North Vietnam May 8, and, most recently, the awesome 12-day bombing of the innards of the North. These actions were hardly conducive to popular demand for the President to be awarded some peace prize.

But Mr. Nixon also put the United States on two tracks toward extrication from Vietnam, and, hopefully, toward peace, soon after he took office. "Vietnamization," the building of South Vietnam's military capability and withdrawal of U.S. forces, was one. The exhaustive, tenacious negotiating effort by Dr. Kissinger was the other. The latter included a generous peace offer one year ago which even provided for President Thieu to resign before a new election.

More than anything else, it was President Nixon's determination for the United States to leave Vietnam without "copping out" that caused the infinitely patient, and often devious, Hanoi Politburo to settle. The Easter invasion of the South was repulsed, with enormous Communist casualties. Hanoi's intransigence at the peace talks resulted in Mr. Nixon's May 8 announcement of resumed bombing of military targets in the North and mining Haiphong harbor.

Doomsdayers predicted the President's trip to Moscow would be canceled, and that China might enter the war. Neither eventuality occurred and Hanoi returned to the bargaining table. More firmness and by mid-October a settlement was imminent. Hanoi tried to press Mr. Nixon into quick acceptance by prematurely announcing the news, but Mr. Nixon did not fall for that either.

"Peace is at hand" became a cynical remark. The nation went glum when it learned negotiations were stalled. Mr. Nixon's decision to inflict aerial punishment on North Vietnam's capability to function, to make war, elicited some of the most anguished condemnation he has received as President. He was likened to Hitler. His sanity was questioned, even by a senator of his own party.

Whether the bombing was a military necessity or sheer punishment for Hanoi's bad manners will be debated for a long time. Devastating as the B–52 raids were, as the London *Economist* noted, they were not as lethal as the far smaller German air raids on London, which killed as many people in one night as the B–52's did in 12 days. The Germans were targeting civilians and we were not—that is the difference.

How little was said or printed about the population targets of the North Vietnamese last spring. They fired shells and rockets into South Vietnamese vilages and refugee centers to terrorize and inflicted 48,000 civilian casualties in the process. The Communists also executed several thousand civilians during the invasion, just as they did in the 1968 Tet offensive.

Too many critics, in their sorrow and pessimism, were blind to North Vietnam's lethal role in the war. Instead of deliberate Communist killing, they only saw American "evil." They saw more years of American involvement, no hope for return of the POW's, a reversal of the detente between the United States and Moscow and Peking, and World War III at any moment. They were wrong on all counts.

Just as they indulged in romantic fancy a decade ago that the United States, as the noble democratic warrior, must fight every threatened nation's battle, so they now in-

dulged themselves in another romantic notion that all was lost.

In truth, some of the harshest critics cannot stand the thought that maybe the Nixon-Kissinger strategy worked, that it took patience, determination, skill and appropriately timed force to end this accursed war. Rather than suffer further mental pain, some critics try to relieve their agonized consciences by attacking one of their long-time favorite ogres—Mr. Nixon.

[From the Atlanta Journal, Jan. 26, 1973]

THEY BEAR RESPONSIBILITY

(By John Crown)

The morning after President Nixon announced that Henry Kissinger had reached an acceptable agreement with the North Vietnamese negotiators, I received a telephone call which contained a query.

The caller wanted to know if it would be possible to pin down how many American battle casualties could be attributed to American protesters prolonging the war in Vietnam.

My immediate reply was that such an answer would be, at best, only conjecture because there would be no way to determine when the war would have ended had not Hanoi been aided and encouraged by the vocal protests and the marchers over here.

Unless, my caller replied helpfully, the North Vietnamese would make public when they would have been willing to sign an agreement had they not been encouraged by the dissent they saw going on in the United States.

It is an interesting point. But we both agreed that the chances of Hanoi ever admitting anything of that sort would be less than zero.

It is well within the realm of reason to take the view that those who cried "peace" the loudest in the United States were contributing to the protraction of death and devastation in Vietnam.

Every demonstration over here gave encouragement to the North Vietnamese to hang in there.

Every time George McGovern opened his mouth to utter one of his usual inanities, the advocates of war in Hanoi had fresh arguments to back them that the United States was only a paper tiger which would blow away in time.

Everyone who marched in protest, everyone who spoke in protest, everyone who wrote in protest—all of them bear some of the responsibility for the suffering and agony that went on in Vietnam.

The vast majority of them were undoubtedly well-intentioned and sincere. They recoiled at the atrocities, but the trouble was they could only connect those atrocities with us. They, for some obscure reason, could never see the atrocities carried out by the predators from North Vietnam, the self-same predators who began the tortured drama and who had it within their power to call it all off.

After all, with the cease-fire agreement some attention has been given to the fact that there are no provisions to require the withdrawal of North Vietnamese military forces from South Vietnam. I have yet to see any reports relating to South Vietnamese forces being present in North Vietnam. The reason is obvious. The North is the invader.

Those who protested the war, and therefore bear some of the guilt for the tragedy that ensued there, will probably reply that the men in Washington who made the decisions which took us there are the ones who are guilty.

Those who made the decisions bear responsibility as do all decisionmakers.

But if this war taught us anything at all, it should be that once this nation is committed to any military conflict the quickest way for us to emerge from it is by the Nation to stand together in unified strength.

Once we were committed to Vietnam, our strength and unity could have gotten us out of there in short order.

Instead, the well-intentioned and gullible joined the evil ones among us and raised shrill voices of protest with their caterwauling.

Their strident noises served to confuse those of us at home, our friends abroad and the enemy we were fighting. The enemy, quite logically, saw the protesters as allies who could only divide us and thereby help him. He was encouraged to continue the war he had begun.

No, there is no immediate means of determining just how many Americans and Vietnamese died because of the encouragement given North Vietnam by the protesters in the United States.

But there is no question that they have blood on their hands.

[From the St. Louis Globe-Democrat, Jan. 24, 1973]

PRESIDENT'S BIG ROLE IN BRINGING PEACE

(By Roscoe Drummond)

WASHINGTON.—The impossible dream has come about—a negotiated settlement which gives South Vietnam a decent chance to survive. What looks like an "honorable peace" is no longer a dream; it is reality.

What brought it about? How did the President achieve it against such terrific odds?

There are four forces which contributed most:

1. Richard Nixon.
2. American public opinion.
3. The United States peace movement.
4. The South Vietnamese.

The President totally rejected a policy of cut-and-run, of peace at any price on the ground that such a course would mean that in the future no ally could rely on American commitment and no adversary could be deterred by it.

Mr. Nixon dared to risk for a time massive unpopularity when he used strong military measures to persuade Hanoi that it couldn't win on the battlefield and, therefore, must negotiate seriously.

He removed U.S. ground involvement, thereby radically reducing casualties. He continued U.S. involvement in the air. The first was politically indispensible and the second was militarily successful.

The President thought he could get Moscow's help to end the war—and he did. The China and Soviet summits had purposes beyond Vietnam. They persuaded both Peking and Moscow that better relations with the United States were far more important than supporting North Vietnam.

We will never know what might have happened if we had abandoned South Vietnam at Hanoi's dictates. We will shortly see the consequences of staying on the Nixon course.

In the end American opinion gave steadfast support to the Nixon policy of holding on for a decent peace. Last year's election showed Hanoi that it couldn't win the war in the United States. North Vietnam had only two choices—to continue a stalemate war or to negotiate seriously.

Last month it tried one final ploy—by breaking off negotiations—to see if Mr. Nixon couldn't be pressured into accepting an unenforceable cease-fire to bring the war to an end before inauguration. Mr. Nixon held firm by resuming the bombing. The American public held firm. Hanoi didn't.

I think we will come to see that on balance the peace movement helped. Obviously it increased opposition to the President's course and for a time tempted Hanoi to believe that America would become so divided that President Nixon would have to accept any kind of peace. It influenced him to withdraw ground forces more steadily than he might otherwise have done. This withdrawal itself demonstrated to Hanoi that Mr. Nixon wanted to get the United States out of Vietnam whenever a fair settlement could be had.

The South Vietnamese did very well. They successfully resisted the onslaught of the Tet offensive in 1968. When Americans were being told that South Vietnam was going to fall apart, it stuck together. For a year now the South Vietnamese army has borne the brunt of the entire ground war.

Whether South Vietnam can secure this peace and build on it, events still to unfold will tell.

[From the Wall Street Journal, Jan. 26, 1973]

THE BIRMINGHAM, ALA., POST-HERALD

Perhaps, under Nixon's policy of patient negotiation and painful bombing, Hanoi has decided, as Henry Kissinger claims, to switch from a military to a political struggle. Or perhaps Hanoi is waiting for the Americans to go home to try again militarily. Only time will tell.

Despite doubts and fears about the future, this is a time for thankfulness that Nixon has finally ended America's longest and most divisive foreign war. One can quarrel with his pace, but not with the fact that he has got 550,000 men out of Vietnam and the POWs back without causing the defeat of the Saigon regime.

This is a considerable achievement, which even his opponents should admit. It required risk-taking, doggedness, and high diplomatic skill. Later, if the Vietnamese parties resume cutting each other's throats, as they might, we trust Nixon will display equal skill in not getting us back into the Vietnam quagmire.

THE DALLAS MORNING NEWS

All Americans are happy about the Vietnam peace—except, of course, the antiwar protesters. They are feeling very down. They have no function unless there is a war to oppose. They are the war lovers. . . . Being for peace in the streets would make no headlines. Even Nixon is for that.

So what can they do? They can hope for a shattered peace—as their spokesman made plain as soon as Nixon announced the cease-fire. Indonesia, they said hopefully, is very unstable, South Vietnam is rotten; there's always a chance of renewed American involvement. Lasting peace looks very uncertain.

So they will agitate the peace as much as possible. It's better than being idle in a time that looks very dull for war lovers.

THE TULSA TRIBUNE

That was a pretty big moment for America last night.

A policy of noble stubbornness won a point that could be vastly important in the history of the 20th Century.

And the apostles of scuttle and bug-out were left pantless.

Whether the at-long-last cease-fire in Vietnam produces a lasting peace, or whether the aggression continues in subtler ways, we cannot know. We have had some experience with solemn pacts with Communist nations.

But the agreement was initialed without betraying the principle that the South Vietnamese have a right to determine the kind of government they will have. And because of that, principle was not betrayed, neither were the thousands of young Americans who died, who are missing, or who have been captured in that struggle.

What kind of an agreement would we have had under a President McGovern?

What happened to all the outcrys by the doves that the December bombings had destroyed the negotiations?

It was our enemies who came to understand best that the spine of a man in the White House was made of steel. It was that steel that brought the agreement while the jackals yelled and the hyenas howled.

[From the Boston Sunday Herald Advertiser, Jan. 28, 1973]

EDITOR'S REPORT: WEEK OF TRAGEDY, TRIUMPH

(By William Randolph Hearst, Jr.)

The only big news stories of the week, the death of former President Lyndon Johnson followed 28 hours later by President Nixon's announcement of a cease-fire in Vietnam, are actually of one cloth.

In a very real sense, Lyndon Johnson's life probably was shortened by the ordeal he was forced to endure as a result of his commitment of American combat troops and bombers to defend our allies in South Vietnam from Communist aggression. He also launched the Paris talks which finally produced an agreement with Hanoi that resulted in stopping the war and which can lead to a permanent peace.

The two are woven together. But the tragedy is that LBJ did not live long enough to see his dreams for peace fulfilled in Vietnam.

During the warm and dignified services for President Johnson at the Capitol and then at the National City Christian Church, I noted that former secretary of state Dean Rusk, former postmaster general Marvin Watson and the Rev. George Davis all went out of their way to pay their respects to President Nixon and to commend his dedication to the principles of Lyndon Johnson.

That is as it should be. I know first hand that LBJ supported President Nixon's program in Vietnam and thought he had followed the right course to force the Communists into peace terms that would preserve an independent South Vietnam.

For four years it has been my opinion that Lyndon Johnson made a grave mistake when he halted the bombing of North Vietnam at the end of 1968. From conversations with Nixon, I know that he shared this opinion.

So, when I was visiting LBJ at the ranch in October, I put the question to him, "Do you think you made a mistake in stopping the bombing?"

He had no hesitation in answering. "No," he replied. "I did it in the name of peace and I would have done anything to achieve peace in Vietnam. If I had it to do over and the outlook was the same and I thought I could win a peaceful settlement, I would do it."

But after leaving the presidency, Lyndon watched sadly as his hopes for peace disintegrated in a cauldron of Communist intransigence. It was then that his successor, Dick Nixon, launched new air attacks against the North in an effort to force a settlement.

How did Johnson feel about that?

I asked him this question, sitting next to him at his ranch. He answered forcefully and immediately, "Nixon is doing the right thing."

In fact every President since Harry Truman—and that includes Eisenhower, Kennedy, Johnson and Nixon—has believed that we had the responsibility to protect our allies in South Vietnam.

It is, therefore, to the everlasting credit of Dick Nixon and Henry Kissinger that they persevered against formidable odds, including constant vituperation from the American left, until they obtained a settlement that can let us quit South Vietnam with honor and with the expectancy that representative government will retain control in Saigon.

They pulled off one of the greatest pieces of diplomacy in my lifetime. I will have to admit that I was critical of the President a few weeks ago for not informing Congress and the people of his reasons for launching the massive air attacks against Hanoi and Haiphong.

But now I understand that he had to remain silent if there was any hope of getting a settlement in Paris. His eye was on the forest while the rest of us had ours on the trees.

None of us knows how successful the Paris agreement will be. Nixon himself called it "fragile," according to Senate Republican leader Hugh Scott.

But it certainly is a major step in the right direction. If the Communists live up to their part of the bargain, we will have peace in Vietnam. They should, since they must be even more war weary than we are, having been involved in almost constant fighting over the past 30 years.

Not possessing a crystal ball to predict the future, my main concern now is to set the record straight for the young people of our country who have parroted the line that we were involved in an immoral war, a war of American imperialism.

Nothing could be further from the truth. The United States has fought four wars overseas in this century—World War I, World War II, Korea and Vietnam—and in every one of them we fought to preserve the freedom of our friends.

In those four conflicts, which have taken a heavy toll of American lives and resources, we have not sought nor have we annexed one inch of foreign soil. To the contrary, after defeating an enemy we have then helped that enemy to get back on its feet and become a productive member of the world community. We did this with Germany and Japan and President Nixon has offered to follow the same pattern with North Vietnam.

I am sick of seeing and hearing our role in Southeast Asia distorted. We sent troops into South Vietnam after the Communists launched a major assault against that tiny country—and we had a commitment to do so.

It has been the national policy of our country to oppose aggression by whatever name—Nazism, Fascism or Communism—since World War II.

Those who would distort our, position should understand that the United States—and the United States alone—has the power and the inclination to prevent small, independent nations from being overrun by a ruthless foe. If it were not for the United States, freedom would be a far more rare commodity on this globe than it now is.

One last word. When I refer to those who distort our role and our history, I am speaking of a small minority of the American people. I know that the great majority has supported our presidents in their endeavors to protect freedom in Southeast Asia and I think the overwhelming defeat of George McGovern last November proved that.

This is a time when all of us should be proud to be Americans, to have a President like Richard Nixon and to have had a President like Lyndon Johnson.

A THOUGHT-PROVOKING LETTER

Mr. ALLEN. Mr. President, the distinguished senior Senator from Alabama (Mr. SPARKMAN) and I have received jointly a thought-provoking letter from a fellow Alabamian, Charles Hardenburg, of Birmingham, which offers some sound advice to Members of Congress.

Mr. Hardenburg states:

It is a truism that thousands upon thousands of people working for the federal government and down into the state governments, set their standards upon those standards imposed upon yourselves by yourselves—the members of the once most respected branch of our government. Please keep it that way.

My prayer for the new year is that each member of the Legislative branch of the government, as he looks into the mirror each morning, will say—Am I an honest man, and am I honest to my constituency? Am I honest to America, for without America my constituency is nothing. As one, we are one; divided we are doomed; but above else let him ask, Am I an honest man?

Mr. Hardenburg has requested that his thoughts as above set forth be printed in the RECORD. Believing that all Members of Congress can profit by the opinions of their constituents, I commend these thoughts for serious consideration and reflection.

A REGRESSIVE TAX SYSTEM

Mr. MUSKIE. Mr. President, more and more of our responsible commentators are concluding that the administration's budget proposals are inequitable and insensitive. In yesterday's Washington Post Hobart Rowan pointed out that the budget leaves intact a regressive and unfair tax system and subsidies for business, while slicing $10 billion from programs aimed at the poor and underprivileged. Mr. Rowan summarizes the administration's attitude as follows:

For the most part, people ought to be fending for themselves, and if they can't—tough.

I hope and expect that Congress will reject a budget based on this negative attitude.

I commend Mr. Rowan's article to the Senate and ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 4, 1973]

1973 ISSUE: NIXON'S CUTS IN SOCIAL PROGRAMS

(By Hobart Rowan)

President Nixon has confounded his critics, and commentators including myself, by doing what they said during the election campaign he couldn't do: slash the budget sufficiently to avoid an increase in taxes in fiscal 1974.

He did it by being ruthless in reducing the social obligations of the government to a growing population. The axe he wielded was a bigger one than envisioned by the Brookings Institution, the American Enterprise Institute, former Republican Congressman Johnny Byrnes and former Treasury aide Murray L. Wiedenbaum, to name a few.

On Dec. 17, in this space I wrote:

"It now appears realistic to believe that the President will hold spending for the current fiscal year (1973) to $250 billion . . . If so, it is possible an administration dedicated to austerity could hold the fiscal 1974 budget to be presented in January to $270 billion, with a unified budget deficit trimmed to $13 or $15 billion—and a balance in the full employment budget."

To accomplish this feat of austerity, as Ralph Nader, the black caucus on the Hill, and other public interest groups pointed out, Mr. Nixon whacked the money out of social programs for individuals, and left the major corporate "tax expenditure" subsidies virtually untouched.

The budget leaves intact a regressive Social Security tax system, while the investment tax credit and accelerated depreciation privileges add to the corporate take. And the administration's pledges to bring in tax reform proposals are not honored with as much as a token.

A letter this week from 23 public interest advocates and groups to President Nixon says:

". . . we would urge that before you stop programs for the many, you at least should scrutinize programs for the few. Before there

are fewer libraries and hospitals and low-income apartments and sewage control systems, there should be fewer subsidized ships, less expensive drug and arms procurement, and more taxes paid by coddled corporations."

In other words, if today's economic imperatives call for reducing the federal budget deficit to counter inflation, Mr. Nixon had an opportunity to whack away at billions used to subsidize the maritime, aviation, defense and other industries, in addition to cutting whatever social programs had failed, or had already fulfilled their purposes. And at the same time, more sense could have been made out of the tax structure.

A close analysis of Mr. Nixon's 1974 budget for which he claims savings of $16.9 billion in "program reductions and terminations" indicates that about $5 billion are in gimmicks or part of a numbers game, and the rest is real.

Some of the "cuts" are most inventive. Remember the son who told his father, "Dad, I saved a dime by walking home instead of taking the bus"? The father responded: "If only you had walked instead of taking a cab, you would have saved three bucks."

An example of that is a claimed $400 million saving in the 1974 defense budget set down as follows: "limit new spending for All-Volunteer Force and other legislation." But that's a "cut" from a total commitment that had never been made.

A bigger phoney item is a claim for savings on social service grants. The assumption in the budget is that this figure would have grown to $4.7 billion in fiscal 1975, although Congress had already put a ceiling on such expenditures at $2.5 billion. Independent budget experts figure that the 1974 saving in this category is over-staked by $2.1 billion. Agriculture "cuts" assume unrealistically high support costs in the neighborhood of $600 million. Another double 1974 item is a $1.0 billion claim for oil recipients.

But putting all that aside, the real cuts are substantial, and are made at a time when many public needs are unmet.

This is where the cuts in the 1974 budget were made: Welfare, $1.5 billion; Medicare and housing, $1.5 billion; Manpower programs, $1.0 billion; Health, Education and Poverty programs, $1.0 billion; Pensions and retirement, $1.0 billion; Environment (by not full-funding the Muskie bill), $1.0 billion; Agriculture, $1.5 billion; Water and natural resources, $0.5 billion; Defense and foreign, $2.0 billion; Space, $0.3 billion; and All other, $1.0 billion.

That all adds up to $12.3 billion. If the $2.3 billion saved on defense, foreign, and space commitments is subtracted, there's an even $10 billion that's been sliced out of money basically ticketed in fiscal 1974 for the poor and the underprivileged.

Perhaps that represents the will of the majority of people. Certainly, that's the way the President is interpreting this election "mandate." To a certain extent, the "I'm all right, Jack" philosophy is pervasive, as Potomac Associates good new book, State of the Nation" shows.

Mr. Nixon has proposed the issue in unmistakable terms, in his interview with Jack Horner of the Washington Star-News, in his Inaugural Address, and now, in concrete terms, in the budget.

But some people in this society do need help, despite the bland and unsupported assumption made by this administration that anything the federal government can do, the states can do better.

Experience casts doubt on this assumption. Fifty different states and the District of Columbia have 51 different standards. One doubts that what motivates Mr. Nixon is a real belief that revenue-sharing with the local communities will do more for the less affluent in our society.

What comes through is the belief that for the most part, people ought to be fending for themselves, and if they can't—tough. We see the true Nixon: austere, conservative, strait-laced and uncompromising, despite the string of surprises he has achieved abroad. His domestic record will go down in the history books, too.

RETIREMENT OF CHARLES APPLETON MEYER, ASSISTANT SECRETARY OF STATE

Mr. PERCY. Mr. President, Charles Appleton Meyer, Assistant Secretary of State for Inter-American Affairs, is returning to private life after 4 years of distinguished public service. It is no surprise that he continues to win plaudits for his constructive role in relations between the United States and other countries of our hemisphere. Fluent in Spanish, understanding of the legitimate aspirations of Latin Americans, a good human being, Charles Meyer did his job exceedingly well.

In the Christian Science Monitor of January 17, 1973, James Nelson Goodsell, the Monitor's Latin America correspondent, writes his own assessment of Meyer's service. I ask unanimous consent that excerpts from this article be printed in the RECORD.

There being no objection, the excerpts were ordered to be printed in the RECORD, as follows:

CHARLES APPLETON MEYER

(By James Nelson Goodsell)

Latin Americans are casting somewhat wary glances at Washington these days over the imminent vacancy in the State Department's top Latin-American post.

At a time when United States-Latin-American relations are none too warm, one of the few bright spots in the relationships, as far as Latin Americans are concerned, has been the role of Charles Appleton Meyer, who currently occupies the post as assistant secretary of State for Inter-American Affairs.

Mr. Meyer is held in warm esteem throughout the hemisphere, in rather sharp contrast with most of the post's previous occupants.

A onetime Sears, Roebuck executive, Mr. Meyer's resignation was not unexpected. When he took the job in 1969, he did so with the understanding that he would stay only four years and then return to business.

Actually Mr. Meyer has held the post longer than anyone else since it was created after World War II. For a long time, the assistant secretary's job looked something like a revolving door, with one occupant after another serving a few months and then resigning.

The fact that Mr. Meyer remained in the post as long as he did impressed Latin Americans. But it was his way of dealing with them that impressed them the most.

Throughout the past four years, Mr. Meyer was able to get across the message that he, at least, cared about Latin America—and this proved of tremendous value in many hemisphere conferences where he was able to tone down Latin-American criticism of United States policy.

Now the Latin Americans are wondering just who will take over the post and what the new occupant will do for relations between the United States and the rest of the hemisphere.

Over the long pull, improved trade relations and increased economic aid are, in the view of Latin Americans, the key to better relations between the United States and the rest of the hemisphere. Still, they are very concerned about who occupies the assistant secretary post.

PRESIDENT LYNDON B. JOHNSON—ORDER OF GRAVESIDE SERVICE AND MEDITATION BY THE REVEREND DR. BILLY GRAHAM

Mr. HUMPHREY. Mr. President, I ask unanimous consent that the CONGRESSIONAL RECORD and the bound volume of congressional tributes to President Johnson reprint the order of graveside service and meditation by the Reverend Dr. Billy Graham, at the funeral of President Lyndon B. Johnson, January 25, 1973.

There being no objection, the service was ordered to be printed in the RECORD, as follows:

FUNERAL OF PRESIDENT LYNDON B. JOHNSON—ORDER OF GRAVESIDE SERVICE (OFFICIATED BY THE REVEREND DR. BILLY GRAHAM, L. B. J. RANCH, STONEWALL, TEX., THURSDAY, JANUARY 25, 1973)

LET US WORSHIP GOD

"I am the resurrection, and the life; he that believeth in Me, though he were dead, yet shall he live:

"And whosoever liveth and believeth in Me shall never die."—(John 11:25–26).

"Let not your heart be troubled; ye believe in God, believe also in Me.

"In My Father's house are many mansions: if it were not so, I would have told you. I go to prepare a place for you.

"And if I go and prepare a place for you, I will come again, and receive you unto Myself; that where I am, there ye may be also."—(John 14:1–3).

THE MEDITATION

Few events touch the heart of every American as profoundly as the death of a President—for the President is our leader and every American feels that he knows him in a special way because he hears his voice so often, glimpses at his picture in the paper, sees him on television, and so we all mourn his loss and feel that our world will be a lonelier place without him. But to you who were close to him, this grief is an added pain because you wept when he wept and you laughed when he laughed. When he was misunderstood you felt his pain and wondered why others had no heart to feel or no eyes to see, but such is the burden, the anguish and the glory of the Presidency.

Here amidst these familiar hills and under these expansive skies his earthly life has come full circle. It was here that Lyndon Baines Johnson was born and reared and his life molded. But the Scripture teaches that there is a time to be born and a time to live and a time to die. Lyndon Johnson's time to die came last Monday. The absence of his vibrant and dominant personality seem so strange as we gather on this site. There was a mass of manhood in Lyndon Johnson. "He was a mountain of a man with a whirlwind for a heart." He loved his hill country. He often said, "I love this country where people know when you are sick, love you while you are alive, and miss you when you die."

Not long ago President Johnson brought me here to this very spot and said, "One day you are going to be asked to preach my funeral. You'll come right here under this tree and I'll be buried right there." In his homespun way he continued, "You'll read the Bible and preach the Gospel and I want you to." And he said, "I hope you'll tell people about some of the things I tried to do."

History will not ignore him for he was history in motion. He will stand tall in the history books that future generations will study. The great events of his life have already been widely recounted by the news media this week. I think most of us have been staggered at the enormous things he accomplished during his lifetime. His thirty-eight years of public service kept him at the

center of the events that have shaped our destiny. During his years of public service, Lyndon Johnson was on center stage in our generation. To him the Great Society was not a mild dream but a realistic hope. The thing nearest to his heart was to harness the wealth and knowledge of a mighty Nation to assist the plight of the poor. It was his destiny to be involved in a tragic war. It is a mysterious act of Providence that his death came during the same week that a peace agreement was reached. As President Nixon said Tuesday night: "No one would have welcomed this peace more than he."

However, there was another more personal, more intimate and more human side to Lyndon Johnson—that his family, neighbors and friends that are gathered here today would know. For example, some of you have seen him load his car or station wagon with children of various racial and ethnic backgrounds and take them on rides or to see the deer running across the ranch. There were hundreds of little things that he did for little people that no one would ever know about. He had a compassion for the underdog.

No one could ever understand Lyndon Johnson unless they understood the land and the people from which he came. His roots were deep in this hill country. They were also deep in the religious heritage of this country. President Johnson often pointed with pride to a faded yellow letter on the wall of his office written to his great grandfather, like many of his forebears, was a preacher and had led Sam Houston to a personal faith in Jesus Christ. Symbolically it says that Lyndon Baines Johnson had respect for "the faith" that has guided his family, his state and his nation through generations. Lyndon Johnson's mother, Rebekah Baines Johnson, who lies here, often read the Bible to her young son.

Within weeks of the time he became President of the United States he said, "No man can live where I live now, nor work at the desk where I work now, without needing and seeking the strength and support of earnest and frequent prayer."

He could have had more excuses than most for not attending church on Sunday. But one of the things for which he will be remembered is that he probably went to church more than any other President.

Some months ago my wife and I were visiting the Johnsons here at the ranch. Lyndon Johnson brought me out to this spot and reminded me again that I was to participate in this service. We spoke of the brevity of life and the fact that every man will someday die and stand before his Creator.

There is a democracy about death. John Donne said: "It comes equally to us all and makes us all equal when it comes." The Bible says: "It is appointed unto men once to die, but after this the judgment" (Hebrews 9: 27).

For the believer who has been to the Cross, death is no frightful leap in the dark, but is the entrance into a glorious new life. The Apostle Paul said: "For to me to live is Christ, and to die is gain" (Phil. 1: 21). For the believer the brutal fact of death has been conquered by the historical resurrection of Jesus Christ. For the person who has turned from sin and has received Christ as Lord and Savior, death is not the end. For the believer there is "hope" beyond the grave. There is a future life! As the poet has written:

God writes in characters too grand
For our short sight to understand;
We catch but broken strokes, and try
To fathom all the mystery
Of withered hopes, of death, of life,
The endless war, the useless strife,—
But there, with larger, clearer sight,
We shall see this—God's way was right.

We do not say good'bye to Lyndon today. The French have a better way of saying it. They say, "Au revoir!"—till we meet again. To you Mrs. Johnson, Lynda, Luci, and other members of the family, it is my prayer that God's grace will be sufficient for you in the days to come. May God grant to each of you a deep satisfaction in the life of one who served his country with such complete dedication. May the God and Father of our Lord Jesus Christ, the Father of all mercies and the God of all comforts, sustain you now and in the days to come.

What he once said about another President we can now say about him: "A great leader is dead. A great nation must move on. Yesterday is not ours to recover but tomorrow is ours to win or lose."

PRAYER FOR THE FAMILY

Our Heavenly Father, who art the dwelling place of Thy people in all generations, have mercy upon us as we are here today under the shadow of great affliction; for in Thee alone is our confidence and our hope.

God of all comfort, in the silence of this hour we ask Thee to sustain this family and these loved ones and to deliver them from loneliness, despair and doubt. Fill their desolate hearts with Thy peace and may this be a moment of rededication to Thee.

Our Father, those of us who have been left behind have the solemn responsibilities of life. Help us to live according to Thy will and for Thy glory—so that when Thou dost call us that we will be prepared to meet Thee.

We offer our prayer in the Name of Him who is the resurrection and the life, even Jesus Christ our Lord. Amen.

BENEDICTION

"Unto Him that loved us, and washed us from our sins in His own blood,

"And hath made us kings and priests unto God and His Father; to Him be glory and dominion for ever and ever. Amen."—(Revelation 1: 5–6).

The God of peace, that brought again from the dead our Lord Jesus, that great Shepherd of the sheep, through the blood of the everlasting covenant, make you perfect in every good work to do His will, working in you that which is well pleasing in His sight, through Jesus Christ, to whom be glory for ever and ever. Amen.

METALLURGICAL RESEARCH

Mr. MOSS. Mr. President, I am pleased to offer to the Senate an extremely interesting article on the success of the University of Utah in metallurgical research. I ask unanimous consent that the article be printed in the RECORD.

Senate bill 263, which the Senator from Wyoming (Mr. HANSEN) and I introduced, along with other Senators, would assist universities and colleges in their efforts in metallurgical and related environmental research.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

METALLURGY SYMPOSIUM ATTRACTS NATION'S TOP RESEARCHERS

The University of Utah continues to expand its reputation as one of the leading metallurgical research centers in America. More than 200 plant engineers, scientists and graduate students offered the latest endorsement this month on campus at a three-day tutorial symposium on hydrometallurgy. Virtually every mining company in the U.S. and Canada was represented.

Dr. Ferron A. Olson, chairman of the Department of Mining, Metallurgical and Fuels Engineering, attributes part of the symposium's success to the two Utah faculty members who presented the lectures. "Professor Milton Wadsworth is the top academic man in the country in the field of hydrometallurgy," he says, and E. Edward Malouf, manager of special projects at the Kennecott Research Center and adjunct professor of metallurgy, "is an outstanding authority on the process of bacterial leaching."

The three-day meeting was a review of the status of hydrometallurgy—a method of producing metals in solutions. It was timely since mining companies are now concerned with environmental abuse and ways of increasing America's metals production potential.

"Other countries have had better ores and cheaper production," says Dr. Olson. "The U.S. supply is plentiful, but it is not high-grade. A ton of ore yields only a few pounds of copper. That's expensive by conventional techniques, so we're looking at other processes for getting the metals out, and one of the most attractive is hydrometallurgy."

Methods of using solutions to make metals were also discussed, and the visitors agreed that the possibility of mining with solutions is on the horizon—actually pumping solutions into the ground and extracting the metals in liquid form.

Participants blamed the decrease in extractive metallurgy research during the past several decades on lack of interest by industry and government.

"Many of the new techniques that have been developed in the past 20 years have come from other countries," says Dr. Olson. "If we can reverse that trend, the U.S. could produce metals more efficiently, solve many of its pollution problems and become competitive in the world market. It's a challenging and exciting future for metallurgical engineers."

ALF M. LANDON SPEAKS IN HESSTON, KANS.

Mr. DOLE. Mr. President, Alf M. Landon is Kansas' senior statesman and one of its most distinguished citizens. From time to time, he accepts speaking engagements in Kansas where he shares some of his insight, wisdom and understanding with those who are in attendance.

One such occasion was a combined meeting of the Hesston, Kans., Chamber of Commerce, and Hesston College on October 19, 1972. Governor Landon's subject was "President Nixon's Design for Peace", and in light of recent successes by the President in pursuing peace, these remarks are particularly interesting.

I ask unanimous consent that Governor Landon's speech be printed in the RECORD.

There being no objection, the speech was ordered to be printed in the RECORD as follows:

PRESIDENT NIXON'S DESIGN FOR PEACE

(By Alf M. Landon)

The American voters never have faced a more momentous decision than in the coming election in just 18 days.

That may sound trite. I submit, however, that never before has the fate of civilization rested in the hands of a trio of tough traders—cool and bold first-class fighting men—Nixon, Brezhnev and Chou En Lai—who are engaged in reversing the basically militant long-term military, political and foreign policies of their respective mighty governments. How that ultimately works out will determine the destiny of all mankind, even babes born this minute.

Never before in all history have three men had such power in their hands because of the spread of nuclear weapons and the development of ways to enhance air power. Never before has the threat of world war been dealt with as realistically and as vigorously and—so far—successfully as President Nixon's proposals designed for peace, stability and prosperity.

Let us look briefly where this monumental change could be upset and then at its amazing set-up in three and a half years.

The first question obviously is, will this trio or their successors be able to continue their realistic and constructive leadership long enough to establish the new philosophy and new international policies involved in working out the details of implementing their goals?

China today cannot match either the United States of America or Russia in either nuclear or air power weapons. They will, however, catch up in a few years.

That is a key issue that confronts Russia. The military and the politburo are evidently divided whether to strike before China can build up greater nuclear power and bigger and more effective air power.

Russia has the air power quickly to knock out China's infant nuclear power. However, the fallout from even a short nuclear war would cause infinite damage for Russia's and the rest of the world's people. Furthermore, at the best, there would probably be one or more Chinese nuclear bombs hit Russia. And Russian armies would be engaged in a long drawn out guerrilla war in China, and would have to sustain the enormous expense of administering occupied areas. Moreover, Russia—by attacking China—would give fresh fuel to attacks from Communists elsewhere questioning Russia's ideological faithfulness.

On top of this is the short food crop in Russia. It is still true, despite all the new weapons, that an army marches on its belly.

Going on three months, there has been a steady build-up of troops by Russia and China on each side of their long border.

There also has been a steady flow of vituperative attacks on China by Chairman Brezhnev and other top Russian government spokesmen. China, of late, has almost become the devil's devil of Russian propaganda, in place of the U.S.A.

In China, Russia has swapped places with the U.S.A. in Chinese rhetoric. All this is of substantial benefit for the foreign policies sponsored by President Nixon. That clears a lot of underbrush away in the long, tedious conversations now going on between the governments preparing for agreement on the details of how to organize simply the preparatory committees.

Chairman Brezhnev is facing tough internal economic and political problems and, recently, two very hard and serious jolts. The food shortage from crop failures has hit Russia right in the belly. Egypt—built up by Russia—but still a third-rate power—kicking out the Russian military—some 15 thousand—and, even more important, denying three harbors for the use of Russia's built-up big Mediterranean fleet.

So far, Brezhnev has ridden them out successfully and continues in the saddle, carrying out his normalization of relations not only with the United States of America, but with Japan and Europe, with India in a special orbit.

Of particular concern to the American people is the nature of Russia's goals in Europe.

The leaders of the drive to pull U.S. troops out of Europe—men like Senator McGovern and Senate Majority Leader Mike Mansfield—advance the argument that it is time for the Western European democracies to assume more of the burden of their own defense. But statistics and the experts alike argue that it is all but impossible for Europe alone to provide an effective military deterrent to the Soviet Union and its allies.

Moscow and the Communist nations of Eastern Europe have 91 divisions in Europe and the Kremlin maintains another 80 divisions in the westernmost districts of the Soviet Union. Against that mass of military power, NATO has only 24 divisions—four and a half of them American.

Such an imbalance of power was clearly in the mind of West German Chancellor Willy Brandt when he unprecedentedly flew to Harvard in June to donate $45 million to finance studies aimed at keeping the U.S.-European relations firm. Without a strong U.S. military presence, Brandt warned, Europe may once again become "a volcanic terrain of crisis, anxiety and confusion. An actual U.S. disengagement would cancel out the basis of our peace."

It is generally overlooked that France has become more and more dependent on Russia economically and its friends, the Arab states. This is especially true for that most vital commodity, crude petroleum.

France has already disengaged from its commitment with NATO. That, coupled with the U.S.A. possibly withdrawing its troops from West Germany, will allow Russia to become dominant in Europe.

West Germany's official defense policy statement for 1972 put the facts bluntly: "The West European nations are not capable of taking the place—politically, militarily and psychologically—of the American commitment in Europe." This, as a leading British military commentator sees it, "will in the end lead to Russia encroaching on vital Western interests—at which point we are all too likely, from habit and from inadequate military capability, to surrender."

The only power that can prevent that ultimate surrender is the U.S. and the only way it can do so is to maintain a strong and determined military and political presence in Europe.

Because European countries have failed to keep all of their commitments to NATO and have been content to leave their national existence in the hands of Uncle Sam, they have eroded—for the time being, at least—their will to fight for their own existence. They have almost failed to maintain their own identity.

Just as Japan and China lost no time in getting together so that they will occupy a more influential position in Asia, so is Russia, under Chairman Brezhnev's policies, in that position with Europe. That will strengthen Russia in the Middle East.

Russia has more than enough armed forces to perpetuate its military position in Europe.

It is interesting to note that President Nixon had barely left Moscow when Russia's No. 1 ideological watchdog, Mikhail Suslov, delivered a jingoistic harangue reminiscent of the Stalinist years. The West, he said, is trying to "implant in our society poisonous seeds of political indifference, anarchist wilfullness, petty bourgeois money grubbing, chauvinism and nationalism." That's why our position . . . "must be active, offensive, concrete and uncompromising."

There are two pragmatic reasons for Russia's tough act. Without the presence of some kind of external bogeyman, it would be difficult to keep controls tight—and controls are the bedrock of Soviet society—and of Chinese society, for that matter. Furthermore, the Soviets must preserve the facade of unrelenting peoples revolution or lose ground to China.

George W. Ball, former Under Secretary of State and a Russian expert, said recently: "For more than two decades, the maintenance of a precarious balance with the Soviet Union has been the central unifying principle in American foreign policy. But many now regard that as an outmoded concept. To them, the Soviet leaders no longer have expansionist intentions; the ideological drive for revolution has, they insist, dried up, while the Soviet state has recognized the futility of its imperialist ambitions.

"It is a comforting belief, strongly reinforced by the deceptive theatricals of the recent summit meeting. Who can believe that a smiling Leonid Brezhnev and all those nice children on the Moscow streets hold any malign purpose in their hearts?

"Yet against all this, there is powerful evidence that the Kremlin has not changed its objectives, merely its tactics. Though we may be in an era of negotiations as President Nixon calls it, it can still remain an era of confrontation."

Up to now, the administration has not tried to answer that question in a categorical manner, since the Soviet Union's commitment to benign co-existence is not yet a safe working hypothesis. Thus, though we have now made a modest initial breakthrough toward a turning down of arms through the preliminary SALT agreement, the president still asks for a larger defense budget; and though there is much facile talk of detente between East and West, he quite properly insists on maintaining our troop deployment in Europe.

It seems to me that all this tends to indicate that Senator McGovern does not have the facts he should have when he talks about cutting American troop strength in Europe and that he is once again willing to shoot from the hip rather than from reality.

On top of that, the Democrat presidential candidate would cut our military appropriations 32 billion dollars over three years.

The authoritative Jane's "All the World's Aircraft" reported three weeks ago that "The Soviet Union is flying a swing bomber the United States cannot match and a fighter plane the Americans cannot catch."

I have heretofore supported cutting down our troop strength in West Germany. Now I think that is a terrible mistake.

When urging normal relations with China and Russia for twenty years, I have repeatedly said I was not willing to sleep in the same room with the late Premier Nikita Khrushchev, for instance, and leave my wallet in my pants over the back of a chair. Undoubtedly Chairman Brezhnev and Premier Chou En Lai feel the same way about us.

That is reason for our President's opposition to cutting our European troop strength—in his cautious and prudent feeling his way toward the sweeping vista in sight of a world of normal relations between the big powers for the first time in three quarters of a century. Who dreamed when Mr. Nixon initiated his Design for Peace in February, 1969, only 6 days after his inauguration, that exciting prospect was in sight?

In other words, he is carrying out his momentous policies as Theodore Roosevelt long ago advocated—"Speak softly but carry a big stick." Let us now look at that amazing prospect.

President Nixon's record is plain to see, whether you agree with it or not. More than any other president, he has kept America's citizens informed of international developments and of his foreign policy goals.

Senator McGovern's foreign policy, thus far, centers only on the abandonment of Viet Nam and the withdrawal of American troops from West Germany. That does not add up to a positive and constructive overall foreign policy. It does not begin to compare with the sweep and scope of President Nixon's global policies realistically designed and indeed for all people. In fact, it is counterproductive.

There are many revolutionary possibilities in the foreign affairs policies initiated by our President.

The Prime Minister of Japan—with a large official party—spent several days in Peking renewing, after thirty-five years—diplomatic relations with China. Taiwan and Japan broke their existing diplomatic relations.

Prime Minister Tanaka is about to visit Moscow to renew Russo-Japanese diplomatic relations after over twenty-five years.

Thirty governments have renewed or established diplomatic relations with China since President Nixon's visit last February.

The two Koreas are talking. The two Germanys have just ratified a traffic agreement pact—a milestone in mutual accommodation. The first start, after long delays, of the SALT talks has been signed by both Russia and the U.S.A.

The change in the international atmosphere involves and affects all lines of trade, science and health. A group of Chinese doctors—welcomed by President Nixon personally at the White House—is exchanging very beneficial information with their counterparts in America. We are exchanging exciting information on the mysteries of space and oceans and planning a joint exploration in these areas with a Russian scientist delegation.

Of great importance is the joint agreement by and between the AP and the Chinese official news agency for the exchange of news and information. A veteran AP reporter in Asia said last Sunday in a dispatch from Shanghai, the cities "are the same but the people are different. They are freerer—more relaxed . . . None of this means that China has overnight become a free country. It is more open than it was 18 months ago."

There is a general atmosphere of amity in the present era unfolding and stretching ahead for the youth of this generation.

The problems facing the world we are living in are not confined to war or peace. They are of peaceful existence itself. There is the rapidly mounting energy crisis and the ecological crisis that must be solved before they reach a climax, if we are to face our responsibilities to the next generation. "One generation passeth away and another generation cometh, but the earth abideth forever" is no longer a reasonable prospect.

If President Nixon's policies fail in realization, we are plunged back into the cold war once again with the corollary arms race that will divert more of our national resources from legitimate domestic democratic processes and concerns.

Thanks to President Nixon's foreign policy, the world will never quite be the same again. He came into office with the purpose of changing the rigid policy of containment of Communism by force. He has done that by introducing the policy of containment by negotiation and cooperation, based on the firm understanding that neither expediency nor bull-headedness will permit the world's powers to solve or accommodate their individual and mutual problems.

It is a new era into which we have entered. It is an era that gives us and all the world's peoples a fresh chance, by talking out their problems and making concessions instead of continually hurling invectives and rattling sabres. What a rewarding life that is, compared to one under war or the threat of war.

Premier Chou—in conference with a group of visiting American newspaper editors last week—said, "China's contacts with the outside world have been dramatically accelerated since President Nixon's visit."

He added a fascinating detail, which I believe we should all think about, in his comment on how "a little ping-pong ball changed the world."

ROBERT M. BALL: AN EXTRAORDINARY SOCIAL SECURITY COMMISSIONER

Mr. MUSKIE. Mr. President, I wish to pay special tribute today to Robert M. Ball, a truly remarkable public servant.

Bob Ball began his career with the social security system in 1939, shortly after the enactment of this landmark program. He has served the Social Security Administration in many capacities, and always with distinction. In 1962, he became Commissioner, a post he held through three administrations.

Bob Ball served Democratic and Republican Presidents alike, but he was always vigilant in keeping politics out of the social security system. With his leadership, the integrity of the social security program was maintained at the highest level—free from corruption, scandal, or mismanagement.

During his 11-year tenure as Commissioner, some of the most monumental improvements were enacted into law, including:

Medicare;

Five social security increases aggregating almost 84 percent to raise benefits to a more realistic level;

Automatic cost-of-living adjustments to help make social security inflation-proof;

A new special minimum monthly benefit for persons with long periods of covered employment and low lifetime earnings;

Liberalization of the retirement test and provision for future automatic adjustments in the exempt earnings limitation; and

Extension of medicare coverage to nearly 1.7 million disabled persons under age 65.

These are just a few of the contributions which he and the Social Security Administration helped to advance to improve the lives of present and future retirees.

Now the Social Security Administration has been given important new responsibilities: The administration of the supplemental security income program which will, for the first time in our history, build a floor under the income of older Americans. Beginning in 1974, this program will replace the existing adult categorical assistance mechanism—aid for the aged, blind, and disabled.

A major reason for assigning the Social Security Administration this vital function, I believe, is because of the high degree of public confidence in the system. The system works, and it works well. Quite clearly, Bob Ball deserves a great deal of credit for the efficiency of the Social Security Administration.

He has made an indelible imprint upon the system during his 30-plus years of service.

For these reasons, I urge President Nixon to exercise the utmost attention and concern to insure that his successor possesses the same outstanding attributes as Bob Ball. In describing the essential qualifications to be the Commissioner of the Social Security Administration, Bob Ball gave this candid assessment:

He should be someone with experience in running a large Federal agency, he should be nonpolitical and a humanitarian.

His sound and sensible advice should, in my judgment, be heeded by the President when he chooses a successor.

Several recent articles and editorials have described the extraordinary qualities of Bob Ball.

Mr. President, I commend these news accounts to the Senate and ask unanimous consent that they be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the Evening Sun, Jan. 25, 1973]

BALL SAYS SSA PROVES GOVERNMENT CAN WORK

(By Anne S. Philbin)

Robert M. Ball, retiring commissioner of Social Security who has served three presidents, hopes Americans will remember that social security "is at the very least, a big exception" to widely expressed views that government isn't working.

"There seems to be a lot of feeling today," he said in a farewell interview in his ninth floor office at Woodlawn, "that federal programs, particularly many Great Society programs, are not working well.

"If this is true, and I am not sure it is," he added, "I think Americans shouldn't forget social security is a big exception.

"It is by far the largest of federally financed programs in the area of health, education and welfare, and accounts for almost one-fourth of the country's entire budget."

Explaining this, Mr. Ball said that in 1974 the Social Security Administration will be paying out about $70 billion, with one out of every eight Americans in the country receiving a monthly check.

The $70 billion figure includes $54.73 billion in social security cash benefits, about $10 billion for Medicare payments, $408 million in "black lung" benefits to miners and their widows and children, and an estimated $3.5 billion to be paid out under the Supplemental Security Income program effective January 1, 1974, for the needy aged, blind and disabled.

MINIMUM INCOME

SSI guarantees a uniform minimum income of at least $130 a month for an individual and $195 monthly for a couple; it is a 100 per cent federally financed and federally administered program.

Mr. Ball said he believes SSI is a "very good addition to the social security law. The federal payments will be higher than those now paid by more than half the states," he said.

"The amount is getting closer to what people need to live on," he added, "and certain onerous and restrictive features of some state welfare assistance programs such as home lien laws, will be removed."

Mr. Ball said he thinks social security cash benefits, which have increased more than 70 per cent in the last five years, have "reached a new level of adequacy."

"We now have the automatic provision which will keep benefits up to date as the cost of living goes up. Also, benefits rise as a worker's earnings rise. Medicare coverage has been broadened to include disabled persons under age 65.

"Over a hundred other changes in social security and Medicare have improved the protection of present and future workers and their families. Americans are paying more but they are getting more," he commented.

SOUNDLY FINANCED

Mr. Ball said the social security program is "completely and soundly financed, under present law, to the year 2011."

Touching upon administrative policies and leadership which have molded the Social Security Administration into what President Nixon has called a "model for other government agencies," Mr. Ball said he is very proud of a number of things that have happened during his 11-year tenure as commissioner.

"We have made a great deal of progress in training minorities for better jobs with SSA, opened up more career opportunities for

women, pioneered in fair housing for our employees, sponsored a volunteer program whereby our employes respond actively to community needs, and supported a substantial educational program.

"We have a strong union (American Federation of Government Employes, Local 1923) which does a good job in protecting employes; it is aggressive, but responsible," Mr. Ball said.

"And I think SSA has had a positive impact on the Baltimore area in the 19,000 jobs it presently provides here plus the 3,000 that will be needed to implement the recent legislative changes."

NEW BUILDINGS

Mr. Ball said the agency's expansion program would include new buildings "here at Woodlawn and also in downtown Baltimore."

Although he said it would be difficult to leave SSA at this particular time in history when the agency faces major problems in implementing H.R. 1's legislative changes, Mr. Ball indicated his departure was a "mutual agreement" between the President and himself.

He said he plans to write, answer questions raised by those who attack the social security system, and help in the development of long-range policy on national health insurance. On the latter, he said "the question today is not if we need it, but how we can accomplish it."

Mr. Ball began his federal career in 1939 as a field assistant in a New Jersey district office at an annual salary of $1,620. He worked his way up through the ranks and by 1954 had become deputy director of the former Bureau of Old Age and Survivors Insurance. Through govenment reorganization, this bureau was to become the Social Security Administration in the early sixties.

Since April, 1962 when President John F. Kennedy appointed him commissoner, Mr. Ball has been serving "at the pleasure of the President for the time being."

SHOCKED SURPRISE

Between then and now, he has submitted four pro-forma resignations to Presidents Johnson and Nixon. When the fourth was accepted by the White House early this month, the announcement was greeted in SSA and official Washington with shocked surprise, principally because Mr. Ball is as respected for his management leadership as his knowledge of social insurance.

He is also well-known and well-liked on Capital Hill, having testified at every congressional hearing on social security since the Fifties.

In describing the qualifications needed by his successor, Mr. Ball, in the judgment of his peers, has used the words they would use to best describe him.

"He should be someone with experience in running a large federal agency, he should be nonpolitical and a humanitarian."

During his 30 years of federal service, Robert M. Ball has placed his indelible stamp upon the social security system. Of all the schemes generated to promote the welfare of the nation's people, social security stands almost uniquely in its absence of associated scandal and accomplishment of its mission.

[From the New York Times, Jan. 25, 1973]

POLITICS, POLITICS EVERYWHERE

(By Wilbur J. Cohen)

ANN ARBOR, MICH.—The recent forced resignations of key personnel in the department of Health, Education and Welfare is an ominous omen of worse things to come.

The termination of Dr. Robert Q. Marston, the distinguished director of the National Institutes of Health, has already been viewed by scientists as the possible politicalization of the institute, which no previous Republican or Democratic Administration has ever attempted. Dr. Marston has been recognized as a nonpolitical and able administrator of an important, difficult and scientific assignment. No reasons were given for his termination from a position so vital to continued expansion of our medical research capacity.

The resignation of Robert M. Ball, the outstanding commissioner of Social Security, is a further recognition that the Nixon Administration fails to understand the importance of retaining its key administrators in its key programs. The Social Security program has always been run on a nonpartisan basis. There has been up to now no political interference in the program by any Administration since it was established in 1935. Ball's superior competence has been recognized by all previous secretaries of H.E.W. His departure prior to the implementation of the massive and far-reaching legislation recently passed by Congress and approved by the President is premature and unfortunate. Next year, total expenditures under Mr. Ball's supervision will exceed $70 billion.

Certainly, changes in personnel in governmental programs are desirable and inevitable. But there is a difference between wholesale and retail changes. The Nixon Administration appears to be trying to tell employes in the various departments that they must recognize who is the boss—the White House.

Government programs such as medical research and Social Security must depend upon the professional competence and morale of the employes who administer them. This is a delicate, sensitive and precious set of elements. It may take many years to build; it can be destroyed in a moment. There is a lack of understanding in high places of the political importance of nonpolitical administration of services vital to the American people.

Prof. John R. Commons, the distinguished labor economist of the University of Wisconson, used to tell his students that an inadequate law which was well administered was to be preferred to a good law, badly administered. The Nixon Administration appears to want to prove that it can administer good laws badly on a reduced budget without first-class administrators—a dangerous experiment.

The forced resignations of many able persons in other agencies of government—such as the Commissioner of Labor Statistics, Geoffrey Moore—tend to support this dismal conclusion. The Commissioner of Labor Statistics is a four-year-term appointment. No other Commissioner of Labor Statistics in any previous Administration has been asked to resign before his term expired. In 1969 the Nixon Administration also fired the chief of the Children's Bureau which no Administration had ever done in the 57-year, nonpolitical history of that bureau. No Administration has such a record of interference in statistical and early childhood development programs.

These personnel changes must be viewed in terms of the repeated White House interference and reversal of Secretary Richardson's recommendations, to name but two: the rejection of his compromise with Senator Ribicoff on the welfare-reform bill, and the lack of consultation on the veto of the Hill-Burton hospital construction amendments.

Coupled with the unprecedented Presidential vetoes of H.E.W. appropriation bills, and the attack by John D. Ehrlichman of the White House staff on the employes in the department prior to the election, why should competent men and women of stature and integrity take any of the jobs vacated? The health, education and welfare of all of the American people are too important to be sacrificed for political purposes.

[From the Evening Star and Daily News, Jan. 15, 1973]

OUSTER AT SOCIAL SECURITY

The word "bureaucrat," like the word "politician," has gathered a distinctly deprecatory ring to it. The public has grown more distrustful of big government, and so it has become fashionable, even in this town that lives by big government, to dismiss the man who works for government as something of a second-rater.

It is all too bad. For though second-raters, and third-raters, abound in government, as they do in private employment, the disparagement of the bureaucracy ignores the hard-working and the able in government ranks, and it ignores those relatively few people who can fairly be called superb public servants.

Robert M. Ball is in that last category of bureaucrat. He will be, at least, until his successor is named and takes over as commissioner of Social Security. Whatever bothersome questions that have arisen about the legislative principles and the financing of Social Security, there is almost universal agreement that here is one government program that works: The computers whirr; the checks go out; public confidence in the system remains high. Bob Ball can take some of the credit for this.

Ball has been with Social Security since 1939 (or almost since its inception. He has been commissioner for the last 10 years, a period in which the system experienced a mighty expansion in size, scope and complexity. As an administrator, keeping on top of the legislation, knowing what had to be done, and doing it in an apolitical way, Ball rode the expansion tide in admirable fashion.

All of which brings up the question: Why did President Nixon accept Ball's pro forma resignation? Ball, it is known, wanted to stay on. And he had reason to stay on, for in light of 1972 legislation further expanding the system to include all the nation's adult welfare programs. Social Security faces a challenge at least as complex as in the move eight years ago to establish Medicare within the system.

What the White House has in mind may become clearer when Ball's successor is announced. In the meantime, we believe the burden of proof is on the administration to show that it can come up with someone of Ball's stature, and someone who will not politicize this key position. Congressman Wilbur Mills, whose knowledge of the system is unequaled on Capitol Hill, says he'll be "watching carefully" the choice of a successor. That's good to hear. We hope a lot of other people, in Washington and elsewhere, will do the same.

BALL LEAVES TOP SSA POST

Veteran Social Security Commissioner Robert Ball resigned under what he termed "a mutually acceptable decision" with the White House.

The 58-year-old career federal official was named commissioner of the vast Social Security Administration by President Kennedy. He was in the forefront of the fight for Medicare and other expansions of Social Security, and was regarded as one of the government's most knowledgeable officials.

No successor was announced.

Although he ran Social Security with an expert hand and generally managed to steer clear of political involvement, Ball was a firm believer in the ability of Social Security to handle larger responsibilities, such as Medicare.

His convictions clashed with those of former chief Social Security actuary Robert Myers, who resigned several years ago after accusing Ball of pushing unlimited expansion of Social Security.

In his letter to President Nixon, Ball said his "personal preference after nearly 11 years as commissioner of Social Security, has been to ask you to accept my resignation, effective at the beginning of the new term. I have refrained from doing so only because of my concern for the program and the Social Security organization during the coming period of great challenge. . . ."

Ball's resignation follows the departures—some voluntary, some not—of the entire top echelon at HEW's health department. Only Food and Drug Commissioner Charles Edwards, MD, remains. He is reported under consideration for promotion.

[From the Scranton Times, Jan. 13, 1973]

NIXON MISTAKEN IN FIRING BALL

(By Bruce Biossat)

WASHINGTON.—President Nixon's dismissal of Robert M. Ball as commissioner of Social Security raises some serious questions about how to achieve and maintain skillful management in the government bureaucracy.

Since the agency has always been deemed to be off-limits politically, it would be a bad slip if the President were to name a successor whose experience suggested he was less a qualified social insurance expert and more an out-and-out political appointee.

But, actually, that is the shallow, obvious aspect of the matter, easy to judge. There is a deeper issue.

Ball has headed the Social Security Administration for nearly 11 years, and for roughly an equal time before that he was deputy commissioner of SSA's predecessor agency. His entire working career falls within the social insurance realm.

Does this kind of service make a man go stale and leave him empty of new ideas?

There is a school of thought that would say yes, automatically. The proponents of this view contend that turnover at the top level should occur fairly frequently. The argument can be guessed. Change assures regular infusion of fresh ideas, new energies, flexibility. Men of long tenure, it is suggested, cannot fill this need.

The argument has undeniable plausibility. The woods are full of executives and administrators whose energies flag and whose imagination runs thin. Rigidity and complacency often set in all too quickly. Against this very real prospect, change—even systematic change—looks like a sound rule.

Yet there is a strong counter-argument put forth steadily in the field of public affairs. Its core is that there are always men with a great capacity for self-renewal, continuing growth, and adaptability to altered circumstances and problems. Such men not only can meet new challenges, but have a way of searching them out.

Here again, the contention has undoubted force. The corporate and government landscape is well dotted with figures whose long service in top posts is a consequence not of power but of demonstrated abilities maintained through markedly changing times.

Proponents of this point argue, incontestably, that to dispense with or shift such leadership from its proved realm is to waste human resource, to deprive a society of commanding individuals who serve its institutions as a keystone holds an arch together.

Does Robert Ball deserve such an accolade as this? There are a good many men in the U.S. Congress and many practiced observers of public service performance who believe he does.

He has presided over Social Security during its transformation from an agency of modest scale to one of enormous size and increasing complexity, and seen it hailed as the best of bureaucracy. In 1965, he laid over it the huge framework of the Medicare program, a task reasonably pictured as one of the greatest peacetime administrative assignments in history. He is a tireless innovator who knows his field as he knows the lines in his hands.

In 1972, Congress handed SSA new challenges for 1973 and 1974. Everything in the record suggests Ball was the man above all to meet them. His expertise is unmatched and at 58 his powers and talents seem undimmed. He is a public servant of genuine distinction. In casting him out, President Nixon has made a gross error in judgment.

[From the Port Arthur (Tex.) News, Jan. 15, 1973]

WAS BALL DISMISSAL MISTAKE?

President Nixon's dismissal of Robert M. Ball as commissioner of Social Security raises some serious questions about how to achieve and maintain skillful management in the government bureaucracy.

Since the agency has always been deemed to be off-limits politically, it would be a bad slip if the President were to name a successor whose experience suggested he was less a qualified social insurance expert and more an out-and-out political appointee.

But, actually, that is the shallow, obvious aspect of the matter, easy to judge. There is a deeper issue.

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[From the Asheville Times, Jan. 6, 1973]

AN UNFORTUNATE NIXON FIRING

President Nixon's shakeup of the federal bureaucracy perhaps moved a step too far when he accepted the requested resignation of Robert Ball as head of the Social Security Administration. The word out of Washington hints that Ball, who worked his way up from the civil service ranks and was named Social Security Administrator by President John F. Kennedy, had too many close contacts in Congress for the liking of the White House.

If so, it is a pity, Robert Ball served with considerable distinction as head of the vast Social Security Administration. He was one of the architects of Social Security's disability and Medicare provisions, and received the Rockefeller Public Service Award for the supervision of the vast social insurance program which now provides benefits to one of every nine Americans.

Ball can bow out with a very clear conscience. Knowledgeable observers in Washington rate the Social Security Administration as perhaps the best of all the federal agencies. There has never been a breath of scandal connected with it, and the experts hold that administratively it functions with a minimum of waste and lost motion. People who have had occasion to do business with regional Social Security offices can testify to the fine courtesty and efficiency of the staff members.

The nation owes a debt of thanks to Robert Ball. It's too bad that he had to fall victim to the Nixon pruning hook.

[From the News American, Jan. 8, 1973]

CHANGE AT WOODLAWN

The resignation of Robert M. Ball as commissioner of the Social Security Administration is regrettable.

Mr. Ball was planning to retire, but it was his hope that he could stay through the crucial period over the next few years when far-reaching provisions of House Resolution 1 are being implemented.

President Nixon, bent on replacing top federal administrators with men of his own choice, decided otherwise. The job is a presidential appointment.

Mr. Ball was supported by powerful congressmen, and a fight could have been made over his ouster, but he chose to avoid one on the sensible grounds that no one wins or loses in such circumstances.

Baltimore, the national headquarters of Social Security, has a keen interest in the person picked to run the agency. Whoever is selected will have a difficult task filling Mr. Ball's shoes. Not only was Robert M. Ball a career agency employee, he also was intimately acquainted with the changes made in H.R. 1.

This measure, enacted by the 92nd Congress, contained provisions so broad in scope that the Woodlawn headquarters will be working overtime in the months ahead to implement them. Social Security, for example, will be assuming the states' responsibility for old-age assistance, aid to the disabled and aid to the needy blind in 1974. Its responsibilities in the administration of Medicare have grown. The agency, in short, has been handed a gigantic task by Congress, and the post of commissioner is no place for a novice.

Mr. Ball's consolation is the knowledge that he presided over Social Security during a time of great change, including the creation of Medicare, and successfully led the agency through the period with a minimum of turmoil. It is unfortunate that he will be unable to remain through the final days of change.

THE FITZGERALD AFFAIR—WHY IS THE ADMINISTRATION AFRAID OF THE TRUTH?

Mr. PROXMIRE. Mr. President, I am pleased to note that the statement made January 31, 1973, by President Nixon about the Fitzgerald case was in error.

President Nixon has candidly admitted he was mistaken when he said that he had personally approved the firing of A. Ernest Fitzgerald from his Air Force job.

Mr. Fitzgerald is a dedicated public servant whose only crime was that he tried to save the taxpayers' money by eliminating waste and mismanagement in defense spending and that he told the truth to Congress.

It is inconceivable to me that any President could condone the actions of the Air Force in the Fitzgerald case.

I am personally convinced that Mr. Fitzgerald will be vindicated and that the injustices committed against him by the Air Force will be corrected.

It is clear now that the President never approved the firing of Mr. Fitzgerald.

The full responsibility for firing Mr. Fitzgerald, violating his rights, and breaking the law protecting congressional witnesses falls directly on the Air Force.

We can only hope that the President's retraction will get the same amount of publicity as his original erroneous statement.

THE PRESIDENT'S PRESS CONFERENCE

I must say that there is a certain disconcerting note in this recent episode, aside from the merits of Mr. Fitzgerald's case. The question in the President's press conference about Mr. Fitzgerald was raised in the context of a preceding question about Executive privilege. The President's response to the Executive privilege question was—

I will simply say the general attitude I have is to be as liberal as possible in terms of making people available to testify before the Congress, and we are not going to use executive privilege as a shield for conversations that might be just embarrassing to us, but that really don't deserve executive privilege.

The reporter, Clark Mollenhoff, of the Des Moines Register, then asked about the Fitzgerald case, which is now pending before the Civil Service Commission where a public hearing is in progress. Earlier in the week, Secretary of the Air Force, Robert C. Seamans, refused to respond to a question by Mr. Fitzgerald's attorney concerning communications between the Air Force and the White House at the time of Mr. Fitzgerald's dismissal. Secretary Seamans invoked Executive privilege in the Civil Service Commission hearing. According to the newspaper accounts, Secretary Seamans said:

I never received any instructions but I will not say I did not receive any advice.

The Secretary went on to say:

I don't believe I can be compelled to go into detail at this time, and, my view is that there should be executive privilege.

A hearing on a personnel matter before the Civil Service Commission is a strange place to find executive privilege being invoked. After all, we are not talking about state secrets or classified information. The Fitzgerald affair involves the question of whether an individual's rights were violated by the method used to separate him from Government service. The Air Force claims Mr. Fitzgerald's job was abolished in a reduction in force intended to bring about greater economy. Mr. Fitzgerald asserts that the reduction in force was merely a scheme to ease him out of his job, and in fact it was a punitive and adverse action against him.

The question Mr. Fitzgerald is now seeking to explore is whether the order to fire him came from the White House or whether there was any White House involvement in that decision.

Mr. Mollenhoff's question on the Fitzgerald case at the Wednesday press conference was:

The specific situation with regard to Fitzgerald, I would like to explore that. That dealt with a conversation Seamans had with someone in the White House relative to the firing of Fitzgerald, and justification or explanations. I wonder if you feel that that is covered and did you have this explained to you in detail before you made the decision?

The President responded:

Let me explain. I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign. I approved it, and Mr. Seamans must have been talking to someone who had discussed the matter with me. No, this was not a case of some person down the line deciding he should go. It was a decision that was submitted to me. I made it, and I stick by it.

Now, the President's answer to the question about Mr. Fitzgerald was direct, explicit, and positive. There was no evasion, no equivocating. The President said in his answer that he "approved" the decision to fire Mr. Fitzgerald. He specifically excluded the possibility that this was a case of "some person down the line deciding he should go." He said in frank terms that he, the President, had the decision submitted to him. And he added, so that there would be no doubt, "I made it, and I stick by it."

THE PRESIDENT "MISSPOKE"

The very next day, the White House issued a clarification of the President's response. Early yesterday, according to press accounts, White House press secretary Ronald L. Ziegler, told the press:

There is a misunderstanding in terms of the name used there.

Later, at a White House briefing, Mr. Ziegler said that the President had "misspoke" himself in his response to the Fitzgerald question.

The White House, according to the clarifying statement:

Can find no record of the matter ever being brought to the President's attention for a decision.

The Fitzgerald case was "a matter dealt with solely by the Air Force."

As I said earlier, I am pleased to note that the President now says he never approved of the firing of Mr. Fitzgerald. But at least one new question has been raised by the White House statement. If the matter was never brought to the President's attention for decision, on what basis has Secretary Seamans invoked executive privilege? I am at this point at a loss to understand how the Secretary can invoke executive privilege in response to a question about any conversations he may have had with the White House in connection with the firing of Mr. Fitzgerald if there is "no record of the matter ever being brought to the President's attention for a decision."

SECRETARY SEAMANS ADMITS HE NEVER READ FITZGERALD'S TESTIMONY

In addition to the muddle over executive privilege, I find Secretary Seamans' other testimony in the Fitzgerald case rather baffling. According to the press reports, the Secretary admitted on Tuesday, January 30, that he had never as of that date read the testimony that Mr. Fitzgerald gave to Congress in 1968 and 1969. The Secretary has made a number of charges against Fitzgerald in connection with that testimony. How can an agency head make charges against one of his subordinates about statements made which the agency head himself has never read?

I ask unanimous consent, to have printed in the RECORD at the close of my remarks two articles by George C. Wilson of the Washington Post on the Fitzgerald hearings before the Civil Service Commission, the portion of the transcript of the President's press conference dealing with the Fitzgerald affair, and articles by Mike Causey of the Washington Post, Adam Clymer of the Baltimore Sun, and John Herbers of the New York Times, reporting on the clarifying statement issued by the White House on the President's response to the Fitzgerald question.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

[From the Washington Post, Jan. 21, 1973]

AIR FORCE REFUSES TO NAME CRITICS OF FITZGERALD

(By George C. Wilson)

The Air Force refused yesterday to reveal its sources for derogatory statements about A. Ernest Fitzgerald, the former Pentagon executive who told Congress about cost overruns on the C-5A.

Fitzgerald was fired on Nov. 4, 1969 after his testimony about the Lockheed-built transport plane. He has been fighting ever since to get his job back.

Yesterday's Civil Service Commission hearing, ordered by the federal courts after extensive litigation, marked the first time such an appeal has been heard in public.

Fitzgerald's lawyers—provided by the American Civil Liberties Union—show that an Air Force investigation of Fitzgerald was part of a top-level attempt to get him fired.

As Fitzgerald put it during a recess in the hearing, "there was an effort to discredit me personally to cast doubt on my testimony on the C-5A."

But Air Force Brig. Gen. Joseph J. Cappucci said repeatedly under questioning that what his office conducted was not an informal investigation of Fitzgerald but was merely an "inquiry." The file kept on Fitzgerald, Cappucci testified, included "vague" allegations made by four persons designated as T-1, T-2, T-3, and T-4 which did not warrant formal investigation.

"Who are T-1, T-2, T-3 and T-4," asked John Bodner Jr., one of Fitzgerald's lawyers.

"I cannot disclose the source," answered Cappucci, former director of the Air Force Office of Special Investigation and now head of a consolidated Pentagon office doing the same kind of work for other services as well. He added:

"I don't want to. I was obliged to listen to anyone who had something to say about the Air Force. I won't disclose anything that reveals their identity."

"The press doesn't have protection against revealing its sources," Bodner said.

"We're talking about the Air Force," Cappucci answered.

Bodner read from the Air Force file on Fitzgerald, including accusations that he was a "pinch-penny" who drove an old Rambler automobile, worked late at the Pentagon and was guilty of conflict of interest in his job as deputy for management systems for the Secretary of the Air Force.

In assessing the accusation against Fitzgerald, Cappucci said, his office talked to the former Air Force executive who had hired Fitzgerald—former Assistant Secretary Leonard Marks. Marks, Cappucci said yesterday, rejected the conflict-of-interest accusations against Fitzgerald out of hand—declaring that "it was old stuff" without foundation.

Marks' favorable statements fortified Cappucci's judgment that charges against Fitzgerald were unworthy of further investigation, Cappucci said. He said he, therefore, closed the file on Fitzgerald in mid-July of 1969. Fitzgerald was fired on Nov. 4, 1969.

Cappucci conceded under questioning that favorable statements about Fitzgerald, such as those by Marks, never found their way into his Air Force file. Cappucci said it was an "inadvertent" omission; "nothing sinister about it."

The Civil Service Commission hearing examiner, Herman D. Staiman, ruled that the Air Force should not be forced to reveal the identities of those who made the accusations against Fitzgerald. Staiman, as head of the commission's appeals office, will decide on the basis of the hearings whether Fitzgerald was justly fired or should be reinstated to his old Air Force position.

The hearing will resume next Monday. Air Force Secretary Robert C. Seamans Jr. is scheduled to testify later next week.

Cappucci answered no when his Air Force counsel, Col. C. Claude Teagarden, asked him if "anyone in the Executive Branch directed or otherwise caused you to open this special inquiry" of Fitzgerald.

[From the Washington Post, Jan. 31, 1973]

AIR FORCE SECRETARY SILENT ON C–5A FIRING

(By George C. Wilson)

Air Force Secretary Robert C. Seamans Jr. invoked executive privilege yesterday and refused to spell out the White House role in the firing of A. Ernest Fitzgerald, the former Pentagon executive who told Congress about cost overruns on the C–5A aircraft.

"I never received any instructions but I will not say I did not receive any advice," Seamans responded when Fitzgerald's attorney, John Bodner Jr., asked him about White House involvement.

The confrontation came at a public Civil Service Commission hearing called to determine whether the Air Force was justified in firing Fitzgerald on Nov. 4, 1969, from his job as assistant secretary for financial management.

"I don't believe I can be compelled to go into detail at this time," said Seamans about his discussions of Fitzgerald with White House officials. "My view is that there should be executive privilege."

Bodner argued that such privilege should be limited to questions about military and state secrets—not personnel matters like the firing of an Air Force executive. But Civil Service Commission hearing examiner Herman Staiman said he did not have authority to compel Seamans to answer.

Later in the hearing, Bodner tried a different approach to the information, asking Seamans "whether you will tell us why you communicated or consulted with the White House."

"I prefer to take executive privilege on that," Seamans said.

"Do you refuse to answer?" Bodner asked.

"Yes, I do," Seamans replied.

Other questions were directed at whether Fitzgerald's testimony Nov. 13, 1968, before Sen. William Proximire's Subcommittee on Economy in Government had triggered his firing.

Seamans said a whole "series of events," not just that 1968 testimony on C–5A cost overruns, had brought Fitzgerald into conflict with his colleagues in the Air Force. He said Fitzgerald's C–5A testimony, while giving "the public the knowledge there was significant overrun on the C–5A," failed to explain adequately how the cost overruns occurred and thus "the position of the Air Force was not properly represented."

"Where did you get the idea he (Fitzgerald) has not properly represented" the Air Force in his Congressional testimony? Bodner asked.

"From Mr. Whitaker," (Philip N. Whitaker, assistant Air Force secretary for installations and logistics), Seamans replied. "I never read his testimony."

Seamans said he probably should have read Fitzgerald's testimony before testifying at the Civil Service Commission hearing.

Seamans also accused Fitzgerald of using the term "golden handshake" when referring to the clause in the C–5A contract which enabled Lockheed to renegotiate the cost for the second batch of airplanes. Fitzgerald told reporters later he never used that term.

The questioning of Seamans is scheduled to resume today at the Civil Service Commission headquarters.

QUESTIONS AND ANSWERS

Question: Mr. President.

The President: Mr. Mollenhoff.

Question: Did you approve of the use of executive privilege by Air Force Secretary Seamans in refusing to disclose the White House role in the firing of air cost analyst Fitzgerald?

It came up yesterday in the Civil Service hearings. He used executive privilege. You had stated earlier that you would approve all of these uses of executive privilege, as I understood it, and I wondered whether your view still prevails in this area or whether others are now entitled to use executive privilege on their own in this type of case?

The President: Mr. Mollenhoff, your first assumption is correct. In my dealings with the Congress—I say mine, let me put it in a broader sense—in the dealings of the Executive with the Congress, I do not want to abuse the executive privilege proposition where the matter does not involve a direct conference with or discussion within the Administration, particularly where the President is involved. And where it is an extraneous matter as far as the White House is concerned, as was the case when we waived executive privilege for Mr. Flanigan last year, as you will recall, we are not going to assert it.

In this case, as I understand it—and I did not approve this directly, but it was approved at my direction by those who have the responsibility in the White House—in this case it was a proper area in which the executive privilege should have been used.

On the other hand, I can assure you that all of these cases will be handled on a case by case basis and we are not going to be in a position where an individual, when he gets under heat from a Congressional committee, can say, "Look, I am going to assert executive privilege."

He will call down here, and Mr. Dean, the White House counsel, will then advise him as to whether or not we approve it.

Question: I want to follow one question on this.

The President: Sure.

Question: This seems to be an expansion of what executive privilege was in the past and you were quite critical of executive privilege in 1948 when you were in the Congress—

The President: I certainly was.

Question: You seem to have expanded it from conversation with the President himself to conversation with anyone in the Executive Branch of the Government and I wonder can you cite any law or decision of the courts that supports that view?

The President: Well, Mr. Mollenhoff, I don't want to leave the impression I am expanding it beyond that. I perhaps have not been as precise as I should have been. And I think yours is a very legitimate question because you have been one who has not had a double standard on this. You have always felt that executive privilege, whether I was complaining about its use when I was an investigator, or whether I am now defending its use when others are doing the investigating—I understand that position.

Let me suggest that I would like to have a precise statement prepared which I will personally approve so that you will know exactly what it is. I discussed this with the Leaders and we have talked, for example—the Republicans, like Senator Javits and Senator Percy, are very interested in it; not just the Democrats, and I understand that. But I would rather, at this point, not like to have just an off-the-top of my head press conference statement delineate what executive privilege will be.

I will simply say the general attitude I have is to be as liberal as possible in terms of making people available to testify before the Congress, and we are not going to use executive privilege as a shield for conversations that might be just embarrassing to us, but that really don't deserve executive privilege.

Question: The specific situation with regard to Fitzgerald, I would like to explore that. That dealt with a conversation Seamans had with someone in the White House relative to the firing of Fitzgerald and justification of explanations. I wonder if you feel that that is covered and did you have this explained to you in detail before you made the decision?

The President: Let me explain. I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign. I approved it and Mr. Seamans must have been talking to someone who had discussed the matter with me.

No, this was not a case of some person down the line deciding he should go. It was a decision that was submitted to me. I made it and I stick by it.

[From the Washington Post, Feb. 2, 1973]

ZIEGLER SAYS NIXON "MISSPOKE" IN REPLY ON FITZGERALD CASE

(By Mike Causey)

The White House yesterday said President Nixon "misspoke" at a Wednesday press conference when he said he had personally approved the firing of A. Ernest Fitzgerald, a top Pentagon contract expert.

At his Wednesday meeting with reporters, Mr. Nixon was asked about the case of Fitzgerald, whose job was eliminated in 1969 after he told Congress of multi-billion-dollar cost overruns in an Air Force contract with Lockheed for C–5A aircraft. On Tuesday, Secretary of the Air Force Robert C. Seamans Jr. had invoked executive privilege rather than tell a Civil Service hearing about the White House role in the case.

"I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign," Mr. Nixon replied.

"I approved it and Mr. Seamans must have been talking with someone who had discussed the matter with me.

"No, this was not a case of some person down the line deciding he should go. It was a decision that was submitted to me. I made it and I stick by it."

A Civil Service Commission examiner is now hearing Fitzgerald's appeal for restoration of the job on grounds that it was a firing, and a punitive firing. The Air Force has steadfastly contended that Fitzgerald lost his job because of an economy cutback, and that he was not fired for his testimony before Congress or for any other reason.

Presidential press secretary Ronald Ziegler yesterday attempted to clear up the situation, saying that the President realized he "misspoke" after reading the Wednesday press conference transcript.

Ziegler said Mr. Nixon told him he was "mistaken in his reference to Mr. Fitzgerald." Ziegler said he did not know which Civil Service firing, if any, Mr. Nixon had in mind on Wednesday.

Fitzgerald, who was once nominated by the Air Force for its top civilian award, was transferred to other duties after his testimony to the Joint Economic Committee. Shortly thereafter he was given 60 days' notice that his job in the office of the assistant secretary for financial management had been abolished.

Seamans later told Congress that it had been impossible to find "a suitable new position in which he (Fitzgerald) could make a suitable contribution" among the Air Force's 290,000 jobs.

The $33,000-a-year Pentagon cost expert took his firing to the courts, and wrote a book about alleged waste and mismanagement in defense contracts. He also worked part-time as a consultant to the Joint Economic Committee, probing Pentagon handling of contracts.

Fitzgerald's case went before a Civil Service Commission appeals examiner to decide whether he had been properly separated under a normal reduction-in-force or fired in violation of Civil Service rules. The hearing was closed to all but the participants and witnesses, standard government procedure.

SCS refused Fitzgerald's request to open up the hearings to the public, so Fitzgerald took the case to the U.S. Court of Appeals here. The court ruled that Fitzgerald, and other civil servants, are entitled to an open hearing if they wish. CSC ordered public hearings, which began last Friday.

Fitzgerald's attorneys hope to win restoration of his job on grounds that he was fired as punishment, and that his job was not abolished for economy reasons. The Air Force is attempting to convince the appeals examiner that the layoff was proper.

Several federal attorneys said they were shocked when they read the transcript of the President's news conference. They said his saying he made the decision to fire Fitzgerald would certainly cloud the CSC hearings, and could result in a ruling of procedural violations.

At any rate, they felt, it weakened the case of the Air Force, since the Commander in Chief said the employee was fired and not laid off for economy reasons.

Sen. William Proxmire (D-Wis.), a champion of Fitzgerald, said yesterday he was "delighted" to have the President's clarification. Proxmire said he had no doubt that Fitzgerald had been fired by the Air Force, and that his "only crime was that he tried to save the taxpayers money by eliminating waste and mismanagement in defense spending and that he told the truth to Congress."

[From the Baltimore Sun, Feb. 2, 1973]

NIXON RESCINDS FIRING COMMENT

(By Adam Clymer)

WASHINGTON.—President Nixon yesterday took back his claim of personally deciding to fire A. Ernest Fitzgerald, the Air Force cost accountant who exposed cost overruns on the C–5A aircraft.

In his Wednesday press conference Mr. Nixon said of the decision: "I made it and I stick by it."

But that statement dismayed Air Force officials who have argued since Mr. Fitzgerald's November 4, 1969, ouster that he was not really fired at all, merely the victim of an economy-minded reduction in force.

The President's statement, they felt, jeopardized their ability to defend their action before the Civil Service Commission, where Mr. Fitzgerald is seeking to regain his job on grounds that he was fired and the firing did not follow proper procedures.

The Air Force was in contact with the White House early yesterday, according to Pentagon sources, although the White House press secretary, Ronald L. Ziegler, said "they did not complain" and did not confirm that they had even called.

Anyhow, Mr. Nixon stopped sticking by his claim of deciding on the Fitzgerald ouster, sending Mr. Ziegler out to say in the morning that "there's a misunderstanding in terms of the name used there" and in the afternoon to say that Mr. Nixon "misspoke himself" and had had nothing to do with the Fitzgerald case.

Mr. Ziegler said Mr. Nixon discovered that he had made the mistake while rechecking the transcript of the press conference last night.

Mr. Ziegler said, "The President did not, as indicated yesterday at the press conference, have put before him the decision regarding Mr. Fitzgerald. We . . . can find no record of the matter ever being brought to the President's attention for a decision." It was, he said, "a matter dealt with solely by the Air Force." He was not "aware" of whether it had come before any White House staff member.

As Mr. Ziegler noted, the President's categorical answer followed a lengthy discussion about the propriety of the claim of executive privilege before the Civil Service Commission by the Air Force secretary, Robert S. Seamans, Jr. Mr. Fitzgerald's name was mentioned in the first question, and Mr. Nixon answered a follow-up this way:

"I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign. I approved it and Mr. Seamans must have been talking to someone who had discussed the matter with me. No, this was not a case of some person down the line deciding he should go. It was a decision that was submitted to me. I made it and I stick by it."

The President's contention that he had not been involved left all his Wednesday answers about Mr. Seaman's claim of executive privilege somewhat muddled. Mr. Ziegler discussed that, too, saying it was a special kind of executive privilege:

"It differs from the normal invocation of executive privilege such as that which would occur before a congressional committee. And it deals with the fact that you have privileged information regarding an exchange of information or seeking of advice from a member of the executive branch or from a member of the White House staff, and that is the basis on which he informally invoked executive privilege."

Mr. Ziegler contended "this is normal procedure in an instance that deals with privileged information, an exchange between members of the executive branch, and is an in-house matter."

Mr. Seamans, questioned on Tuesday, had declined to say anything more about his contacts with the White House than, "I never received any instructions, but will not say I did not receive any advice."

[From the New York Times, Feb. 2, 1973]

NIXON RETRACTS HIS STATEMENT HE ORDERED FITZGERALD OUSTER

(By John Herbers)

WASHINGTON, February 1.—President Nixon retracted today a statement he made at his news conference yesterday that he had ordered the dismissal of A. Ernest Fitzgerald, the Air Force analyst who had disclosed soaring costs and alleged waste in production of the C–5A transport plane.

Mr. Fitzgerald's dismissal, in November, 1969, is currently the subject of a Civil Service Commission hearing. Mr. Fitzgerald contends that he was dismissed for disclosing before a Congressional committee some $2-billion in cost overruns. The Air Force contends that his job was one of a number dropped in an economy move, and thus he was not dismissed at all.

It left unchanged, Mr. Nixon's statement of yesterday could have wrecked the Air Force's case before the Civil Service Commission.

President Nixon was asked about the matter yesterday at his news conference in connection with the use of executive privilege, specifically in the refusal of Air Force Secretary Robert C. Seamans, Jr., to disclose at the Civil Service hearing any part that the White House had played in the dismissal.

Executive privilege not to testify has been used to protect conversations between Administration officials and the President, but Mr. Seamans seemed to be expanding its use to conversation with anyone in the Executive branch.

NIXON STATEMENT QUOTED

"Let me explain," Mr. Nixon said at his news conference. "I was totally aware that Mr. Fitzgerald would be fired or discharged or asked to resign. I approved it, and Mr. Seamans must have been talking to someone who had discussed the matter with me. No, this was not a case of some person down the line deciding he should go. It was a decision that was submitted to me. I made it, and I stick by it."

This, in effect, repudiated the Air Force's contention in the dismissal hearings that Mr. Fitzgerald had not been dismissed.

Civil Service regulations say that employes covered by the Civil Service Law cannot be dismissed without just cause.

Today, Ronald L. Ziegler, White House press secretary, was asked why Mr. Nixon had dismissed Mr. Fitzgerald. He said that there was some question about the statement made at the news and that he would have to confer with the President.

RURAL ELECTRIFICATION ADMINISTRATION

Mr. GRAVEL. Mr. President, when, on December 29, President Nixon announced the termination of the REA 2-percent loan program, he struck a severe blow to rural America and the American form of government.

The REA loans have been instrumental in the development of the rural areas of this country and today play a crucial role in many areas—especially Alaska. By terminating this program, the President is saying that we do not care about the people who do not live in heavily populated areas and who do not have a heavy political clout. He is saying that he does not care about the past and present policies of this Government.

There are many who disagree with the President's attitude. Among them is the National Rural Electric Cooperative Association. Recently, they issued a resolution that presents a realistic and logical approach to the REA issue. I ask for unanimous consent that it be printed, in its entirety, in the CONGRESSIONAL RECORD.

There being no objection, the resolution was ordered to be printed in the RECORD, as follows:

RESOLUTION

Whereas, it is our view that the President has wholly exceeded his authority in terminating the statutory REA electric loan program, and

Whereas, the Rural Development Act of 1972 is completely unsuited in its language and purpose to achieving the objectives of the Rural Electrification Act of 1936, and

was never intended by Congress to be used in lieu of the Rural Electrification Act.

Whereas, although there may be electric cooperatives, who can accept loan capital at rates in excess of 2%, there are still many such systems which cannot afford higher interest rates,

Now, therefore, be it resolved: That we wholeheartedly support legislation of the type offered by Senators Humphrey and Aiken to restore effectuation of the statutory REA program.

Be it further resolved: That as soon as loan procedures under the Rural Electrification Act are reinstated, we will negotiate in good faith with all parties concerned toward amendment of the Rural Electrification Act to provide whatever changes may be required to improve its budgetary impact and/or interest rate structure with the understanding that low interest rate capital will continue to be available to those borrowers who need it.

IN MEMORY OF LYNDON BAINES JOHNSON

Mr. HATFIELD. I was in Oregon on the day Members of this body offered eulogies to the late President Lyndon Johnson. I would like to offer a few comments of mine in tribute to this unique American, whose imprint will be upon our society for decades ahead.

Mr. President, it was with a deep sense of shock that I learned of the death of former President Lyndon Baines Johnson. My family's deepest sympathy goes out to the entire Johnson family at this time of deepest personal tragedy.

Lyndon Johnson was among the greatest legislators of all time, demonstrating this genius both as a Senator and as President. His knowledge and understanding of Congress as a body and the personalities of its leaders gave him a unique ability to influence legislation hearing his imprint.

As a former leader of this body, President Lyndon Johnson respected the Congress in its role in shaping policy. Johnson's outstanding record in civil and human rights must not be overshadowed by the grim war associated with his administration.

Mr. President, another attribute I respected about President Johnson was his accessibility to Members of Congress. In my dealings with him, as a junior Republican Senator, I found him always ready to talk on the telephone or at the White House when problems arose, either in my home State of Oregon or on a national level.

THE GENOCIDE CONVENTION—ARTICLE III AND FREE SPEECH

Mr. PROXMIRE. Mr. President, the major objection raised against Article III of the Genocide Convention is that it would curtail the right of freedom of speech guaranteed to all Americans by the first amendment to the Constitution.

Article III lists five acts which would be punishable under the Genocide Convention. They are:

First. Genocide;

Second. Conspiracy to commit genocide;

Third. Direct and public incitement to commit genocide;

Fourth. Attempt to commit genocide; and,

Fifth. Complicity in genocide.

Critics of the convention have charged that to punish someone for "direct and public incitement to commit genocide" would infringe on his right to free speech. Such criticism fails to distinguish freedom from license.

There is a clear difference between those statements which are protected under the first amendment and those, such as a direct incitement to action, which are not. For example, it has long been considered both morally and legally wrong for an individual to scream fire in a crowded theater when there is no fire. Although some have argued that such action is protected under the first amendment guarantee of freedom of speech, the courts have ruled otherwise.

Recently, the U.S. Supreme Court ruled on the difference between protected and prohibited speech. In its opinion, the High Court stated:

> The constitutional guarantees of free speech and free press do not permit a State to forbid advocacy of the use of force or of law violations except where such advocacy is directed to incite or produce such action. Brandenburg v. Ohio, 395 U.S. 444 (1969).

Clearly there is no conflict between the Supreme Court's interpretation of the first amendment and article III of the Genocide Convention.

This position was supported by then Assistant Attorney General William H. Rehnquist, who is now a member of the Supreme Court. At hearings before the Committee on Foreign Relations during the 92d Congress, Mr. Rehnquist testified that there would not, and in fact could not, be any conflict between constitutionally protected free speech and the Genocide Convention.

The American Civil Liberties Union—ACLU—which has defended the rights of individuals for more than 50 years regardless of the beliefs or political persuasion of its clients, also said it saw no conflict. Indeed, the ACLU said it would be the first to complain if it thought the Convention infringed on any American's civil liberties.

Article III in no way violates the first amendment guarantee of freedom of speech. At the same time the article is specific in setting forth five acts which are punishable under the Genocide Convention. Not only is genocide itself included but so also are complicity, conspiracy, incitement, and even the attempt to commit genocide. Thus, responsibility for genocide goes beyond those who are directly involved in the act and helps increase the effectiveness of the Convention.

It has been 24 years since the Genocide Convention was first transmitted to the Senate by President Truman. At that time he called on the United States to ratify the Convention and demonstrate that—

> The United States is prepared to take effective action on its part to contribute to the establishment of principles of law and justice.

The time has come to carry out his request.

REVENUE SHARING TRADE-OFFS

Mr. HATFIELD. Mr. President, Senators were aware of my vote against the massive revenue-sharing proposal considered, and approved, by Congress last session. At the time, I discussed the various reasons for my opposition. I believed it would lessen local initiative by making it more dependent on the checks from Washington. Other factors were discussed at the time.

One of Oregon's most respected newspaper editors, Mr. Eric Allen, Jr., editor of the Medford Mail Tribune, explained in a recent editorial another aspect of the revenue-sharing legislation. He refers to the frequent mention of the availability of revenue-sharing programs to replace Federal programs cut in recent months by the executive branch of the Government.

I ask unanimous consent that this fine editorial from the January 23, 1973, Mail Tribune be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

REVENUE SHARING'S TRADE-OFFS

It has often been said in this space that Oregon is fortunate that it does not have any more military installations and military contractors than it does. This is based on the proposition that what the federal government bestows, the federal government can also take away—and this proposition has been proven time and time again.

When an economy becomes dependent upon federal largesse, it is vulnerable to acute dislocations when that largesse is removed. Just ask anyone in Seattle—or in other aerospace towns—or in Umatilla County, where the Army Depot is being cut back severely.

It is now beginning to appear that "revenue sharing"—which was highly touted as the beginning of a "new federalism," and a "new American revolution"—is not the federal bonanza some thought.

It is, in fact, beginning to appear that it is not a gift from on high as much as it is a shifting of priorities and responsibility.

As revenue sharing checks have gone forth in recent weeks to states, counties and cities, they have been accompanied by quiet (and not so quiet) announcements of cuts and impoundments of funds in other federally-supported programs.

The state's fiscal officer the other day stated it is still not known whether Oregon will achieve a net gain, or suffer a net loss, as a result of these shifts.

States and local governments are being forced to try to find ways to keep alive important programs that had federal funding to support them, up to the time that revenue sharing became available.

But revenue sharing also has its booby traps. It can be ended. It can also result in drastic alterations to local tax requirements, if the revenue sharing money goes into long-range projects that would require local funding if the Federal money were to stop.

As a result, most local jurisdictions are choosing to spend their revenue sharing funds on what Gov. McCall derisively calls "lamp posts"—that is, on one-shot capital expenditures, rather than on continuing programs.

This is understandable. We also think it is the right approach (the governor to the contrary notwithstanding), particularly if these one-shot expenditures serve the needs of the people, provide them with necessary amenities, and make possible economies in government that can only be achieved by capital expenditures.

Revenue sharing, in short, has helped to solve some local problems, but it has created others, and whether the trade-off is a net gain or a net loss remains to be seen.—E.A.

PRESIDENT LYNDON B. JOHNSON—EULOGY BY JOHN CONNALLY

Mr. HUMPHREY. Mr. President, I ask unanimous consent to have printed in the RECORD—and for purposes of reprinting in the bound volume of tributes to President Johnson—the moving eulogy to President Lyndon B. Johnson, delivered by the former Governor of Texas and former Secretary of the Treasury John Connally, as a part of the graveside service, January 25, 1973.

There being no objection, the eulogy was ordered to be printed in the RECORD, as follows:

EULOGY FOR PRESIDENT LYNDON JOHNSON BY JOHN CONNALLY, JANUARY 25, 1973

We lay to rest here a man whose whole life embodied the spirit and hope of America.

How can a few words eulogize a man such as he?

Not in a purely personal way, although President and Mrs. Johnson had a profound effect on my life, on Nellie's, and the lives of our children just as they had on the lives of many of you within the sound of my voice.

Not in a dispassionate way because none who knew him could speak dispassionately of him.

And not in words of great elegance and adornment simply because he would not have wanted that.

Lyndon Johnson spoke plainly all of his life. He spoke to the hearts of people. The wellspring of his thoughts and words and deeds was always the fundamental character of the plain people he loved, whose dreams and aspirations he tried so hard to bring to reality.

Eloquent praise and heartfelt words of sympathy have poured forth since last Monday afternoon when we learned this great heart had stilled. The world has a fallen leader and owes him much honor.

But I feel today it is those plain people he loved—the silent people—who mourn him the most.

He gave them all he had for 40 years.

He gave them his incredible energy; his matchless legislative mind, and his restless devotion to the ideal that his country's grasp should always exceed its reach . . . that nothing was impossible when there was a determined will.

He was one of them. He never forgot it, and they will never forget him.

Lyndon was one of three presidents to-be-born in this century. But this Hill Country in 1908 was not much different from the frontier his father and mother had known.

The comforts and ammenities were few; the educational opportunities were determined by the quality of a single teacher or a hand-full of teachers; and a man's fortune was dictated by the amount of rain or the heat of the sun or the coldness of the north wind.

Yet a child's dreams could be as wide as the sky and his future as green as the winter oats because this, after all, was America.

Lyndon Johnson made his dreams come true because he saw the real opportunity of this land and this political system into which he was born. He never doubted he could do it because he always knew he could work harder than anyone else . . . sustain his dedication longer than anyone else . . . and renew his spirit more completely than anyone else—no matter how serious the setback or even the defeat.

Thus he rose from those limited beginnings to the zenith of power, and as he so often said with a mixture of awe and pride, "I guess I've come a long way for a boy from Johnson City, Texas."

But with all of his strengths, Lyndon Johnson cannot be viewed as a man above men—A mythical hero conquering all before him.

In a sense, his life was one of opposites—of conflicting forces within him trying to emerge supreme.

The product of simple rural surroundings, he was thrust by his own ambition into an urbane and complicated world.

Born into a southwestern, Protestant, Ango-Saxon, heritage, he found his native values challenged constantly in the political and social climate which enveloped him.

Reared and educated without benefit of a more worldly existence, he thirsted for the knowledge that would propel him to the heights in the life he chose for himself.

Some criticized him for being unlettered and unsophisticated when, in truth, he was incredibly wise and incredibly sophisticated in ways his critics never understood; perhaps because he dealt not with things as they should have been, but as they were.

He was uninhibited by hyprocrisy or even false pride. He was not afraid to let his feelings show.

It is said that in some ways he was an insecure man. Of course he was. He knew he was not endowed with the kingly virtues of always being right; he tried merely to do his best to discover what was right.

He recognized his own shortcomings far more than many of his detractors recognized theirs. He never hestitated to ask for help, and he understood better than most the meaning of loyalty and mutual affection among friends and associates.

The same insecurities existed in Lyndon Johnson that exist in all of us. His strengths and his weaknesses were universally human qualities shared by people everywhere who have also dreamed of the mountaintop each in his own way.

President Johnson cared for America. He demonstrated his care not so much in words, although many of those words will endure for as long as freedom endures, but in the goals he set and the deeds he performed.

President Johnson cared for people, no matter where they lived in this world or their color or their heritage. He showed this in public ways too numerous to list. What is more important, he showed it in private ways when the world was not looking.

Not long ago, he visited the ranch of a friend in Mexico and discovered a small rural schoolhouse for children in the depths of poverty. When he returned to Austin, he and Mrs. Johnson gathered dozens of small wind-up toys, medicine, clothing and other items for those children. And when he went back to Mexico, he took those things with him, and he had his own Christmas celebration with those children.

So we have the vision of a former President of the United States, perhaps down on his knees, surrounded by youngsters from another land whose language he did not speak, demonstrating for them how to wind up a 25-cent toy.

Somehow, I think that's how Lyndon Johnson would like best for us to remember him.

The tens of thousands who have filed past his bier, and the tens of millions who mourn him from afar—those are the people who understand who he was, and what he was, and how he thought—because he was one of them.

I think they would know of his frustration of leadership, his impatience, the occasional temper, sometimes the sharp tongue, but always the overriding courage and determination of this complex man.

Surely they would know of his anguish over sending men to war when all he wanted was peace and prosperity and freedom. It seems ironic on this day that his predecessors began the war in Southeast Asia, and his successor ended it. It was his fate to be the bridge over the intervening chasm of conflict that swept this country and the world. But he accepted the role without flinching, and no one would be happier today, no one would be more appreciative of the beginnings of peace and the President who achieved it than the President who worked so long and so unselfishly for the tranquillity that eluded him.

It is fashionable among some to refer to Lyndon Johnson as a tragic President.

But I believe history will describe his Presidency as tragic only in the sense that it began through tragedy, for his service was not one of tragedy, but one of triumph.

It was a triumph for the poor, a triumph for the oppressed, a triumph for social justice, and a triumph for mankind's never ending quest for freedom.

Along this stream and under these trees he loved, he will now rest.

He first saw light here. He last felt life here. May he now find peace here.

THE QUALITY OF AMERICAN EDUCATION

Mr. GRAVEL. Mr. President, I commend to the attention of the Senate an article entitled "The Community College in Ferment," written by Prof. Jeffrey M. Elliot, of the University of Alaska.

Professor Elliot has dedicated his career to help to improve and enhance the quality of American education. He has demonstrated to the profession that Alaskan educators are deeply concerned with the direction of higher education. This article shows his perseverance. I am pleased to offer the article to the Senate as a challenge and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE COMMUNITY COLLEGE IN FERMENT

(By Jeffrey M. Elliot)

It is abundantly clear that this generation of young people is struggling desperately to fashion a more just and humane world. Unless such an effort is made, say its spokesmen, mankind will have to live with all of the madness which presently haunts the globe. It is terribly impatient with those in positions of responsibility who are insensitive to the great social ills which blight the mind and spirit of man—hunger, poverty, racism, illiteracy, disease, pollution, overpopulation and war. Furthermore, it is tired of all the empty promises, the illusory goals, and the ingenuous rhetoric of those who have the power to right these injustices.

As I see it, these young people believe that life should be lived in style, in beauty, and that the only way to live is by embodying the ideals of love, nobility, courage, service and truth. It is easy, however, as Ashley Montagu reminds us, to fall into the trap of the affluent society's values.[1] These are most spurious and beguiling. What the young are asking is that we make a determined effort to live these noble precepts on a daily basis, and that we work together to bridge the "gap of tragedy" between what is and what ought to be.

It is very easy to understand why so many people of our best people, when faced with a world torn by hatred and bigotry, blinded by intolerance and suspicion, and corrupted by dishonesty and privilege, turn their backs on society and the horrors it represents. Who can really blame them for finding it difficult to relate, with some kind of integrity, to the dehumanizing social structures of which they are inevitably a part. But the fact is, as the

[1] Ashley Montagu, personal letter, 21 June 1969.

students have discovered, alienation and withdrawal are the end of man, for he can only function as a whole person in a world like ours by continuous involvement.

America is in a frightful mess. We need to only pick up a newspaper or watch the late news to be inundated with the daily nightmare of violence, fear, and mistrust that gives us yet another example of man's irreverence of life. The very air is rife with corruption, and it is a most difficult thing to endure this relentless erosion of the human spirit.

Most young people, however, are painfully aware that there are no enchanted isles to take refuge on; that maybe man will destroy himself within the next few years, but as long as there is life there is hope that he will avoid this possibility. Unlike many of their elders who have reconciled themselves to the world as it is, these young visionaries, inspired by high ideals and unfulfilled dreams, are working indefatigably for the kind of social reforms they are interested in. If mankind can be saved, it will be saved by people feeling and thinking and acting exactly as they are.

Even the most casual observer of the American educational system would have to admit that the ranks of the disgruntled are growing, both at the more prestigious colleges and universities where student protest has a long and rich heritge and on the more placid campuses as well. Many of the harshest criticisms leveled at our country, its cherished institutions and time-honored traditions, which only a few years ago were espoused by a tiny minority, are today shared by the overwhelming majority of college students.

These young reformers, embittered by the degradation of the human condition, suggest that their education is irrelevant to life; that instead of it offering them new hope and opportunity, it has shamefully mirrored all of the pretense, deceit, and hypocrisy which pervades the larger society. Furthermore, despite lofty denials from the educational establishment, these students bitterly resent the pomposity of college administrators, the indifference of many faculty members, the excess of unnecessary rules and regulations, and all the rest of the nonsense which precludes any contact with that which is really vital and alive.

From my perspective, our schools are in deep trouble. They have not only lost favor with the communities which must support them, but with the young people as well. In this regard, the community college has a special obligation to provide a stimulating and rewarding learning experience for all who might desire it, whatever their diverse backgrounds or objectives. This implies that as professional educators, we must do more to develop a social and intellectual atmosphere which encourages serious scholarship and provokes critical and far-sighted thinking, in addition to fostering honest, collaborative human relationships. The time when the community college could parade as an extension of the high school is gone, and the challenge of the present is whether we have the vision to turn inward and reconstruct our institutions so that they better reflect the needs and desires of those they serve.

As for believing in a better tomorrow, Bishop James Pike said it best when he argued that the only way there will be a better tomorrow is if we make it so.[2] It is important therefore, that those of us who are entrusted with the responsibility of educating the young, throw the weight of our own lives on the side of improving conditions in our schools; that each of us, regardless of our differences, strive to eliminate the most distasteful features of the present standardized, impersonal, and authoritarian system which is now so prevalent and replace it with one which is more individual, human and free. This, alas, is a general statement and may appear overly simplistic. Yet, it is an intellectual simplification which is sorely needed, something very hard to find in the academic world.

In the end, Conrad Richter is right. Jerry Farber is right. Neil Postman is right. And Charles Weingartner is right. They are right because they see clearly, that in a Madison Avenue manner, we have packaged our responses to certain challenges in a negative way, labeling ourselves as helpless and defining the situation as impossible to solve. It is a kind of reverse-idealism, full of guilt, blame, self-punishment, and apathy. I am optimistic, not because I know what will happen or when, but because that is the only way that I can live; it is the only way that insures that I will keep struggling; it is the only way that gives any of us half a chance. Historian Howard Zinn sees it more clearly than most: "My study of history has persuaded me more and more that the past is an enormous burden; it weighs us down, ruins our will to act. Of course, it is true, as a past fact, but it carries over and insists on its truth as a present and future fact, and we give power to it."[3]

What this means to those of us in higher education should be clear. We must never forget how history, how academic learning, how books, and how abstract thought can imprison us. If we are to break free, to rebuild our schools in a loving and creative manner, then we must come to believe in our own freedom. We cannot use the past as an excuse for inaction. We cannot cite precedent as a reason for passivity. We cannot blame others for the ills of the system. Instead, we must live as free men. As men of passion. As men of vision. We must seize the initiative for our own future.

[2] Bishop James Pike, personal letter, 20 March 1968.

[3] Howard Zinn, personal letter, 26 April 1969.

FEDERAL ACQUISITION OF KLAMATH INDIAN FOREST LANDS

Mr. PACKWOOD. Mr. President, I am pleased to join with my colleague from Oregon (Mr. HATFIELD) in sponsoring legislation providing for Federal acquisition of the Klamath Indian Forest Lands of Oregon. The purchase almost became a reality last year through the expert strategy and cooperation of both House and Senate Members of the Oregon congressional delegation, and again this year we are joining in legislation to insure that these some 135,000 acres of prime and scenic timberland within the boundaries of the Winema National Forest in Oregon will be protected and will remain as forest land. Only management of this timberland on a long-term, sustained-yield basis by the Forest Service will assure responsible use for all the resources involved.

It seems almost certain that if this rich natural resource is not purchased by the Forest Service, it will be vulnerable to commercial exploitation. Exploitation would be a poor exchange for the opportunity to do something for the Indians, as well as to protect our forest lands. The Oregon congressional delegation is unanimous in urging the Government to buy the land, and the President has agreed that such a move would be sound public policy.

He has stated his willingness to approve the acquisition of these unique lands, lands constituting prime forests and productive fish and wildlife habitat. Management of the Klamath Indian Lands by the Forest Service would be facilitated by the fact that they are already under intensive management. Because of this, there would be less surveying, rehabilitation, and reforestation, and fewer road and access problems than on many of the lands managed by the State now. Pressures on forests to produce more timber, more water, more forage for wildlife and livestock, more recreational opportunities and attractive greenspace for people are increasingly evident at every turn.

The U.S. Forest Service is exceptionally well-qualified to manage the Klamath Forest for such multiple benefits in the public interest. I hope that this will be the case as soon as can be arranged. It is imperative that the Klamath Indian Lands be purchased for purposes which will best serve the ecological well-being of this vast tract, as well as to insure long-range benefits to the residents of the area. Certainly, the long-term benefits, both economic and cultural, which Forest Service management would provide to the Indians and other citizens under sustained-yield and multiple-use principles, justify very serious and early consideration of this legislation.

NATIONAL VOTER REGISTRATION ACT

Mr. McGEE. Mr. President, on Friday last I was scheduled to appear at a conference of the National Association of Secretaries of State in New Orleans to explore with them the means of encouraging wider participation in our democratic electoral processes. The weather, unfortunately, prevented my flight from getting to New Orleans, and the staff had to carry on without my presence.

As the sponsor of S. 352, the proposed National Voter Registration Act, I had intended to deliver some remarks regarding voter registration laws to the conference. Today, I ask unanimous consent that those remarks be printed in the RECORD. Later on, Mr. President, I will advise the Senate further on the actions taken by the various State officials at this meeting.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

REMARKS TO CONFERENCE OF NATIONAL ASSOTION OF SECRETARIES OF STATE

Before I begin my brief remarks about voter registration, let me thank you for having me here. I specifically wish to thank your host, Wade Martin and Mrs. Gloria Schaffer, a member of the Election Administrators Conference Committee; and, of course, William Boyd of the National Municipal League who helped prepare me for this visit.

Last year when my voter registration bill was before the United States Senate, I was discouraged when the bill was defeated by four votes. My discouragement arose not so much by the narrow defeat, because that happens to any Senator more often than not, and frequently by much wider margins. My discouragement arose because I had the feeling that very few Americans, particularly politicians, and those who should have been deeply concerned about voter registration problems were not.

I want you to know that being with you today has done much to lift my spirits. The

fact that you are devoting your entire time during this meeting to election problems is most gratifying. I am particularly encouraged that your agenda shows you have isolated one of those problems which has concerned me for some time . . . the problem of voter registration.

The encouragement I feel today is motivated not only by the possibilities I see for opening up our system of franchise, but by the fact that those who know most about election problems and voter registration have gathered together in one place to pool their experiences and considerable talents. It is in this spirit that I am here today with the expectation of learning, as well as sharing our mutual desire to make this system we call representation work better.

In no sense do I wish to fall into the trap of knowing all the answers or believing that the Federal Government, in our varied and plural system, is the only agency of problem solving. Instead, I am here to share my views with you. But more importantly, I am here to listen. I am here to understand the problems you, particularly, face.

To facilitate our exchange, let me briefly offer my views. From a national standpoint, what then is the problem of voter registration? What can the national government, in tandem with local registration agents, do to come to grips with the problem?

It seems to me the problem can be largely described by the following facts:

1. In 1968, 47 million voting age Americans did not vote. The President received only 43 million votes.

2. In 1972, 62 million voting age Americans did not vote. Nixon received 47 million votes out of 77,460,000 total votes cast. This means 55% of voting age Americans voted in 1972. It also means that *President Nixon was elected by one-third of the voting age population!*

3. Roughly *only* 60% of voting age Americans voted in the past four Presidential Elections, while 75% of Canada's voting age citizens cast their ballots; 80% of England's voting age citizens cast their ballots and 85% of Germany's voting age citizens cast their ballots.

It is my conviction that a large part of this dismal record has been caused by our prior voter registration system. For example:

1. Nine out of ten *registered* Americans vote.

2. Only six out of ten voting age Americans vote.

3. 80% of voting age Americans voted in 1876, before registration laws were adopted.

4. 48% of voting age Americans voted in 1924, after registration laws were adopted. In short, one-third of America in 1924 *stopped* voting.

5. The Gallup Poll concluded in December, 1969 that:

"It was not a lack of interest, but rather the residency and other registration qualifications that proved to be the greatest barrier to wider voter participation in our nation."

Not only has prior registration served to discourage full participation in the electoral processes, but as you all well know, most of our present registration system is expensive to the states and localities. Moreover, you also know it is cumbersome and frustrating for those of you who are in charge. I believe we can do something about those problems as well.

In view of this admittedly sketchy outline, I am sure we can all agree that the problem is a grave one; indeed, a threatening one. As a former professor of history and as a United States Senator, it seems to me much of America's great strength and most promising capability has been our capacity to actively open up our system of participation. Of course, we have always tempered the changes we have made as a nation by balancing our hopes and expectations against our experience. For this reason, the changes we have made over the past decades have been largely workable.

It is time now to couple our awareness of the need for change and our experience. That is why you are here today and that is why I am here today and that is why I have recently introduced a voter registration bill in the United States Senate. That bill will be heard next week before my Committee on Post Office and Civil Service.

Let me quickly outline the provisions in S. 352. If the bill is passed, there would be established in the Bureau of the Census a National Voter Registration Administration. The National Voter Registration Administration would be run by a bipartisan group of three administrators, each appointed for four-year terms. Between 45 and 30 days before the close of registration, the Postal Service will deliver a postcard registration form to every household in the country. If the householder wishes to register through the card, he can fill out the appropriate blanks and return it to his local registration official.

S. 352 has a number of provisions to prevent fraud. The state laws concerning fraud will still be appropriate. The National Voter Registration Administration will give reasonable and expeditious assistance to local officials upon request. The National Voter Registration Administration may, upon determination, request the United States Attorney General to bring legal action. The penalties for fraud can amount to as much as $10,000 or imprisonment for not more than five years or both.

Perhaps the most important part of the voter registration bill is the assistance it offers to the states. The fact that national voter registration forms will be mailed to every household is not only a convenience for the unregistered voter, but should serve to shrink the time, energy and money presently being spent by many states to secure new registrants. In addition, the bill provides assistance to state officials in terms of technical and manpower assistance for the registration-by-mail program and election problems generally.

The National Voter Registration Administration will pay the states a fair and reasonable cost for processing registration postcards. Roughly, that payment will be based on the cost of each card processed. Furthermore, the bill proposes to pay any state which adopts the national registration form and system for its own state elections, as contrasted with federal elections, a grant or stipend up to and including 80% of the state's cost of processing the total number of national registration cards in that state.

There are, I am sure, a good many questions in your minds about my proposal. Clearly, I cannot answer all of them today, even if I had the answers. That is why we are going to have hearings on February 7 and 8. I hope some of you will be able to testify at those hearings.

In the meantime, let me try to anticipate some of your questions by concluding my remarks with a few brief comments.

In our hearings last year, the matter of voter fraud was raised. Frankly, in my own mind, I do not see fraud as a serious problem. In the first place, fraud in our election system is infrequent. In the second place, when it does occur, it is most often at the election-day point—not at the prior registration point. In the third place, for a number of years, Texas has practiced printing registration forms in newspapers which can then be returned to the registrar. This system of registration has brought on no increase in fraud in the State of Texas. In the fourth place, North Dakota has no prior registration system. A study by the University of North Dakota in 1970 concluded: "Fraud-free elections are possible without voter registration." And in the last place, S. 352 provides for federal anti-fraud assistance to state and local officials. Our current system does not provide at all for such assistance.

Perhaps you foresee another problem based on the fear that the national voter registration bill will cause additional burdens for local registration agencies. I don't think so. For one thing, the postcard system should be much less cumbersome than the sworn affidavits, roving registrars and in some cases, duplicate lists for federal and local elections that are currently used. It seems to me that the technical and personnel help from the Voter Registration Administration would help to relieve some of the pressures you currently experience. And certainly, the financial assistance from the National Voter Registration Administration should also be helpful.

Once more, let me thank you for having me here, and I wish also to express my deep hope that together we can attack the problem of achieving wider participation in the democratic process. Certainly, this is the place to begin that effort. All of us have a stake in a free and open system and that stake can be enhanced immeasurably by your experience and large talents.

Before I must leave to catch my plane, I would like to visit the small group discussions you are about to have concerning your problems, particularly the one about voter registration. At any rate, Rod Crowlie a member of my staff, will be available to you until you conclude. He, like me, is here to assist you in any way he can. In the meantime, Rod will distribute an outline of my bill which I hope will be useful to you.

ALAN RUVELSON: FINE EXAMPLE OF A COMMUNITY LEADER

Mr. PROXMIRE. Mr. President, Alan K. Ruvelson is an accomplished and valued citizen of St. Paul, Minn., whose many community services deserve recognition. Mr. Ruvelson has held positions of responsibility in business and civic organizations, and has just been named president of the Minnesota Association of Commerce and Industry.

I especially honor Alan Ruvelson for the years of talented work he has given to small business in Wisconsin and elsewhere. In view of his many contributions, I ask unanimous consent that an account of his activities, which appeared in the January 21, 1973, edition of the St. Paul Sunday Pioneer Press, be printed in full at this point in the RECORD.

There being no objection, the article was ordered to be printed in the Record, as follows:

RUVELSON WEARS MANY HATS

(By Joe Delmont)

When Alan K. Ruvelson was recently named president of the Minnesota Association of Commerce and Industry (MACI) it was only the latest in a lengthy string of similar community and business-related service appointments.

Among his numerous posts, Ruvelson, 57, has served three years as vice president of business development at MACI; is a past secretary and past president of the board of governors of the National Association of Small Business Investment Companies; is a former member of the regional advisory board of SBA; is a former member of the St. Paul School Commission, and is former legislative chairman of the St. Paul PTA Council.

Ruvelson currently serves on the panel of arbiters for the American Arbitration Association and is a member of the advisory commission of the Minnesota Department of Economic Development, among others.

Ruvelson cites his father as one of the individuals who influenced him most, especially regarding his involvement in community affairs.

The elder Ruvelson owned a diamond importing business and Alan spent 23 years with the company before founding First Midwest Corp., Minneapolis, in 1959.

"My father felt it would be wonderful for me to get involved," Ruvelson recalled recently. "I did something he never had the opportunity to do. I think that anything I did, either in politics, or the school, or civil affairs, I did because of him."

As president of MACI, a group which represents some 1,500 companies employing about 300,000 persons across the state, Ruvelson said one of his most important functions will be as a communicator.

"We have to serve as a sort of state-wide chamber (of commerce) so that we can coordinate the message that comes through to the general public. And we'll serve as an educator for our members, as well."

Ruvelson said that state businessmen are now facing three major problem areas: the local tax climate; the "workability" of expanded unemployment compensation, and ecological concerns.

The upcoming months of the legislative session will be critical for the state's businessmen, Ruvelson said.

"We better do the job in presenting our case during the next three or four months," he said, "or we may have a long time to complain about it."

The MACI is in difficult position, Ruvelson said, because it has a dual role to play; it has to present the positive aspects of Minnesota in recruiting new industry at the same time that its members discuss the negative aspects with government and community leaders.

"It's not just like an industry role or a chamber," he points out. "We must be very positive when we talk to outside industries. We can't just cry wolf about how bad it is. But at the same time, we must talk among ourselves about how we can improve the tax basis and the communities . . . the schools or whatever."

A St. Paul native, Ruvelson graduated with honors from St. Thomas Military Academy in 1932. He later attended St. Thomas College and the University of Minnesota, graduating with distinction from the latter in 1936 where he earned a degree in business administration.

Ruvelson and his wife, Louise, reside at 1297 Pinehurst Ave.

DEATH OF JUDGE WILLIAM McRAE

Mr. CHILES. Mr. President, the people of Florida and the judicial system of our Nation have lost a most distinguished and outstanding jurist. U.S. District Judge William A. McRae was buried last week in Jacksonville, having died of an apparent heart attack. He was 63 years of age.

Judge McRae was for approximately 14 years a law partner of Spessard L. Holland, who served my State of Florida and the Nation so long and so ably in the U.S. Senate, and who himself died just last year. I am deeply privileged to be following in the seat held by Senator Holland.

Judge McRae has established a notable record since leaving the law firm of Holland, Bevis, McRae, and Smith in 1961 to become the late President John F. Kennedy's first appointment to the Federal bench. The judge was named chief judge of the middle district of Florida in 1971.

He made a number of decisions on the bench which had far-reaching local and State effect.

Judge McRae was a Rhodes scholar and held memberships in many legal and civic organizations. He served a term as president of the Florida Bar Association and was a past president of the Bartow Rotary Club. He was a colonel in the Army in World War II and served as an aide to President Franklin D. Roosevelt at summit meetings at Teheran and elsewhere.

His survivors include two daughters, a son, and two brothers.

Mr. President, his knowledge, his wisdom, his ability, his courage will be missed. He will be missed.

ADDRESS BY SENATOR NELSON ON DRUG ADVERTISING

Mr. McINTYRE. Mr. President, for the past 5 years the Subcommittee on Monopoly of the Small Business Committee has been conducting extensive hearings on prescription and nonprescription drugs, the pricing structure, the advertising techniques, and the use and misuse of these drugs. As a member of the subcommittee, presided over by the Senator from Wisconsin (Mr. NELSON), I have been privileged to participate in these extensive and informative hearings.

Recently, before a conference sponsored by the National Council of Churches, Senator NELSON presented a thoughtful paper covering several important aspects of the promotion, sale, advertising, use, and abuse of prescription and nonprescription drugs. I ask unanimous consent that it be printed in the RECORD.

There being no objection, the paper was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR GAYLORD NELSON

According to the latest figures, the prescription drug industry in 1971 spent more than $1 billion on advertising and promotion. It is estimated that of this sum "more than 85 percent must be classified as an economic waste."[1] Since the sales of drug manufacturers amount to about $4 billion,[2] the advertising amounts to about 25 percent of sales.

This should be compared with the drug industry's expenditures on research and development which amount to roughly 6.2 percent of sales.[3] In other words, as percentage of sales the pharmaceutical industry spends about four times as much on advertising and promotion as on research and development.

This great disparity becomes even greater when we consider the quality of the research conducted by the drug industry. According to HEW's Task Force on Prescription Drugs:

"Since important new chemical entities represent only a fraction—perhaps 10 to 20 percent—of all new products introduced each year, and the remainder consists merely of minor modifications or combination products, then much of the industry's research and development activities would appear to provide only minor contributions to medical progress.

"The task force finds that to the extent the industry directs a share of its research program to duplicative, noncontributory products, there is a waste of skilled research manpower and research facilities, a waste of clinical facilities needed to test the products, a further confusing proliferation of drug products which are promoted to physicians and a further burden on the patient or taxpayer who, in the long run, must pay the costs."[4]

In other words, the great efforts of the pharmaceutical industry in persuading doctors to use drugs can be fully appreciated especially when compared with the relatively small effort to provide important contributions to medical progress. Moreover, the number of people who decide which and how many drugs should be used and who must be reached by drug manufacturers is relatively small. The purchase of prescription drugs by 200 million people in the United States can be controlled by efforts directed at only 200,000 physicians. This means that at least $5,000 is being spent per year on each doctor to persuade him to prescribe drugs.

Does the large amount of advertising provide unbiased information to make wise prescribing decisions?

Or does excessive drug promotion, often represented as physician "education" or independent journalism, lead to irrational prescribing and over-medication?

In other words, is drug advertising the best way, i.e. the most objective and economical way—of conveying drug information to physicians?

If not, are there appropriate remedial policies that can improve both the quality of information and the economic efficiency with which it is provided?

In my judgment, drug advertising by its very nature cannot provide unbiased information to physicians. As the London Observer stated in its comments on the Sainsbury Committee's report on the pharmaceutical industry:[5]

"Far more alarming is the basic conflict between the aims of the industry and those of good medical practice. The industry must seek to maximize consumption of its products; doctors (good doctors, at any rate) seek to minimize it."

This observation is confirmed continuously by the efforts of the industry to enlarge the use of its products. The result is the vast overuse of drugs in this country. The use of antibiotics offers a good example. A recent study[6] in a 500 bed, nongovernmental community hospital indicated that the use of antibiotics was rational in 12.9 percent of the cases; irrational in 65.6 percent and questionable in 21.5 percent. Half of all irrational therapies were so judged because no antibiotic was necessary or warranted.

Drs. Paul Salley, Louis Lasagna and others found:

". . . that a large amount of drug prescribing and drug costs are for common, benign, and self-limiting illnesses (for example, the uncomplicated common cold). United States national marketing research data also indicates that most physicians (about 95 percent will issue one or more prescriptions to a patient whom they diagnose as having the common cold, and almost 60 percent of the prescriptions will be for antibiotics."[7]

The sharply increased use of psychoactive drugs, however, presents the most satisfactory—from the industry's point of view—return on sales effort. It is easier to expand the areas of application of these drugs through intensive promotion than for any other class of drugs. The reason for this, according to testimony before our Subcommittee, is that a large percentage of patients who come to see a physician have vague, undefined psychogenic complaints that do not have specific physiologic origins.

In explaining why our society is a drug culture, Dr. Charles Edwards, the Commissioner of the Food and Drug Administration gives the following reasons:

"1. The increasing complexities and stresses of modern society.

"2. The postwar discovery of chemicals

Footnotes at end of article.

that allegedly help the average person cope with these stresses and frustrations.

"3. The tremendous wave of advertising over the media, especially TV, creating an environment in which the consumer feels that reaching for a pill, tablet, or capsule is a panacea for all of his ills."

"The postwar therapeutic revolution made available to millions of Americans the drugs to which they now turn to help them solve these problems.

"But the third point, Mr. Chairman, I think is essential to the understanding of what we are now being confronted with. The advertising industry took advantage of the first two factors, the increasing complexity of our society and the discovery of the mood drugs to promote and advertise these drugs in such a way as to actually create a climate of need.

"I am speaking here of both over-the-counter and prescription mood drugs. I think it is fair to say that despite the contention by many of the advocates of advertising that it is educational, drug advertising is designed to sell; to motivate the physician to prescribe and the consumer to buy.

"This is particularly true among the mood drugs. A casual examination of the medical journals indicates that prescription mood drugs are being promoted at such rates and with such themes as to create an unrealistic demand for these drugs.

"In other words, the manufacturers of prescription psychotherapeutic drugs are stretching the uses and the intent of the medications beyond their proven medical benefits. The general tenor of these advertisements is cleverly designed to create an unnecessary demand for the drug." [8]

Several years ago, Aventyl was offered for a new mental disorder, Behavioral Drift—"the fluctuating symptoms of the patient's emotional problem." No one was able to identify exactly what this illness was, not being of recognized psychiatric diagnosis. The reason, presumably, is that it was discovered on Madison Avenue. As FDA's chief counsel stated as far back as 1966, ". . . it uses a catch phrase to cover a host of 'target symptoms' so that the drug is indicated and prescribed for the ordinary frustrations of daily living to reach a much larger patient population than the scientific data will support." The FDA stopped the advertisement but the damage had already been done. The ad did sell huge amounts of Aventyl.

Five years later, we find that the industry is expending huge resources to enlarge the concept of mental disease by redefining everyday human problems as psychiatric problems, thus making them appropriate subjects for drug treatment.

Sandoz Pharmaceuticals is pushing a very powerful tranquilizer "for the anxiety that comes from not fitting in."

"The newcomer in town who can't make friends. The organization man who can't adjust to altered status within his company. The woman who can't get along with her new daughter-in-law. The executive who can't accept retirement."

No element of our society is neglected: the young child, the college girl, graduate students, housewives, salesmen, old people are all included.

If your child is anxious about going to school for the first time, if she is afraid of going to the dentist or fears the dark, or separation from her parents, tranquilize her with Vistaril.

Librium is being promoted to the college girl for the following situations:

1. "Today's changing morality and the possible consequences that her new freedom may provoke acute feelings of insecurity.

2. "Her newly stimulated intellectual curiosity may make her more sensitive to and apprehensive about unstable national and world conditions.

3. "Exposure to new friends and other influences may force her to re-evaluate herself and her goals.

4. "She may be excessively concerned over competition—both male and female—for top grades; unrealistic parental expectations may further increase emotional tension.

5. "The new college student may be afflicted by a sense of lost identity in a strange environment."

1971 was the year in which the Ciba Company discovered a new illness, "Environmental Depression," and the recommended situations for use of Ritalin, an amphetamine-like substance, if accepted by the medical profession, could well embrace every man, woman and child in the nation.

Ritalin is recommended when:

1. "Air conditioners are turned down, or off. Lights dim. Transportation slows down, or stops—usually in a long, hot summer. This is when comfort, convenience, and productivity suffer. So does the emotional outlook of some individuals. Already frustrated by the constant din around them, helpless in the face of situations they can't control, and faced with the daily exposure to bad news and crises, they fall prey to a phenomenon of the times—."

2. "If you suffer from the 'constant assault of noise on the eardrums, frustrated from situations out of control, ecologic pollution, and social unrest.' "

3. "With all forms of communication emphasizing social unrest, riots, crime, and breakdowns in traditional thinking, many are convinced that established mores are rapidly disappearing. While most people accept this (and other everyday crises) as part of the contemporary society, others find it another straw that strains the emotional back . . ."

In addition, the Ciba Company has been promoting the use of Ritalin for managing children with "minimal brain dysfunction." Three physicians from Duke University, in a letter to the *New England Journal of Medicine* (July 29, 1971, p. 293) complained that: "The Ciba advertisement seems to blur intentionally the distinctions between hyperkinesis and minimal brain dysfunctions" They stated that: ". . . we are disturbed that Ciba has embarked on an extremely expensive and very skillfully designed advertising campaign for the promotion of Ritalin for children with an entity that is virtually without defined limits."

According to the industry, there is no end to life situations where a pill should be taken.

If you are a traveling salesman, and you are away from your wife and children, and under the "strain of tracking down customers and living out of a suitcase—(and) the family problems left unsolved at home"—of course you should take Librax.

If you are a woman with an M.A. degree (Fine Arts—PTA—President Elect)—and if your life is centered around home and children, with too little time to pursue a vocation for which you've spent many years in training—for this situation. Hoffman-La Roche recommends Valium.

Not wishing to discriminate against the male, the same company recommends Valium in a two page ad "for men who may have an M.A. (Class of '66)—Ph.D. (thesis in progress) letters that represent a young lifetime of work—a formal education nearing completion. But still there are long arduous examinations to pass, a doctoral thesis to finish—a period in which stress is often converted into the gastrointestinal symptoms of psychic tension."

For the woman who is 35, who has "collected, among other things, a college degree she's never used, two small children underfoot most of the day, a school-age child who has problems adjusting to their frequent relocations and a husband with round-the-clock military obligations"—Sandoz Pharmaceuticals suggests taking Mellaril, a powerful phenothiazine tranquilizer.

The drug industry would have us believe that we are all suffering from mental illness and should be taking psychotropic drugs. But just in case there are a few of us who do not fit into the life situations presented by the other firms, Merck and Company has made sure that nobody is left out. In its advertisement in *Medical World News* of July 16, 1971, Merck poses a number of questions, suggesting the purposes for which Triavil should be used:

"Lately, have you often felt:
1. Sad or unhappy
2. Pessimistic about the future
3. Disinterested in others
4. Disappointed with yourself
5. Easily tired
"Have you recently had:
6. Difficulty making decisions.
7. Difficulty working
8. Frequent crying episodes
9. Sleeping problems
10. Loss of interest in sex
11. Loss of appetite"

Since everyone experiences one or more of these conditions at some time or other, it would appear that the whole country should be taking Triavil.

The industry is telling us that it is unnecessary to try to stop noise, pollution, traffic jams and energy scarcities. Do not concern yourself with ameliorating the ills of our society, or your interpersonal relationships. Just take a pill which will help you adjust to the existing situation.

The available data indicate that the industry's generous definition of mental illness has been accepted by many in the medical profession and the public. Psychoactive drugs accounted for 28.3 percent of total manufacturers' domestic sales of drugs in 1969.[9]

Many of the above mentioned advertisements no longer run. The FDA required the Sandoz firm to run corrective ads which stated that Serentil is a phenothiazine derivative which was approved only for serious psychiatric disorders and should not be used for ordinary life problems. The Ciba "Environmental Depression" ads are no longer being run because the FDA informally suggested to the industry that such blatant ads be discontinued, and no corrective ad was required.

We must remember, however, that—and this is an important point—approximately $700 million,[10] the major effort in drug advertising and promotion, is being spent on thousands of detail men, itinerant salesmen, who are at this very moment pushing drugs through oral representations which are not monitored by the Food and Drug Administration. There is no reason to doubt that the messages the drug firms are not conveying through visual advertising are being conveyed through the oral route.

We seem to be always in a situation where the companies make claims they know very well are not justified from a medical standpoint. They make their point through heavy promotional campaigns. They convince doctors to prescribe these drugs for purposes for which they shouldn't be prescribed. Then the corrective ad saying it was all a mistake runs later someplace, but the prescribing goes on for the purposes for which it originally was promoted.

Even more important, however, is the effect of drug advertising in fostering a drug culture by promoting the use of drugs advertised to suppress normal emotional reactions to the ordinary frustrations of daily living.

Dr. Mitchell Rosenthal, director of Phoenix Programs in New York City, stated:

"We are all advised in the advertisements sponsored by the drug companies not to suffer pain or discomfort, however mild, for

Footnotes at end of article.

more than a few seconds—indeed the virtue of one drug over the other is compared in number of seconds to take effect. Yet we scold our young people when they do not wish to 'face reality' and turn to drugs.

"However, neither the public nor the patient is adequately informed by either the drug industry or the medical profession of the physical, psychological, and social costs exacted by such a model of drug use and of the major consequences for the individual, the community, and society." [11]

Dr. Donald Louria, a well-known expert in the field of drug abuse, emphasized:

"Let no one delude himself into thinking there is no nexus between excessive self-medication and use of illegal drugs. Good epidemiological studies show that parents who use inordinate amounts of medicaments breed children who have a far greater likelihood of using illicit drugs." [11]

Dr. Louria presented the results of three studies showing the relationship of drug taking by parents and illicit use by their children.

According to a study done by Dr. Reginald Smart of Toronto:

"If the mother is a daily tranquilizer user, then the child is three and a half times as likely to use marijuana, 10 times as likely to use opiates, five times as likely to use stimulants or LSD, seven times as likely to use tranquilizers as an appropriate control group whose mothers were not daily tranquilizer users. If the mothers use tranquilizers daily, then 35.9 percent in this series of children used marijuana contrasted to 9.7 percent in the controls." [12]

Dr. Blum's study in California found that:

". . . if you look at intensive users of amphetamines, that is regular amphetamine users among the young, 31 percent of their parents used stimulants.

"For less extensive users, the figure was 19 percent, whereas the nonusers who had parents who used amphetamines was 5 percent of the time. That is, among the extensive users, there was a sixfold difference in the likelihood that their parents would also be amphetamine users.

"In regard to tranquilizers among intensive users, among the young, the parents used transquilizers in 68 percent of the cases. Less than intensive use, in 55 percent, and among the nonusers 38 percent of the parents have used tranquilizers. So once again if a young person uses tranquilizers, the chances are far greater that that pattern was established previously within the household." [12]

Although Dr. Louria's own study of 12,000 high school and junior high school students in northern New Jersey had not yet been completed, when he testified in 1971, the then available data showed:

". . . if you look at the young people who are using intravenous methedrine, and then at their fathers, there is a five and one-half times as much tranquilizer use with their fathers than in the control group that does not use intravenous methedrine, and the figures for mothers is threefold. If you look at marijuana, LSD or heroin, and then look at tranquilizer or stimulant use in the parents, it is two and one-half to five times greater than it is among control groups.[12]

"Now, to me I think all three epidemiologic studies are almost super-imposable and they have been done in widely different areas of this continent, in different populations, and all of the studies say the same thing, that if you want your children to use illicit drugs, then be a user of tranquilizers or stimulants, or sedatives yourself, or an excessive user of alcohol or tobacco.[12]

An article in the September 25, 1972, issue of the Journal of the American Medical Association states that:

". . . A relaxed attitude toward abusable drugs has established the medical profession as a prime community source for these materials.

"Beyond this, and of greater significance, is the physician's unwitting role in creating drug dependence among his own patients.—A review of clinic charts showed that many patients were regularly receiving tranquilizer prescriptions for no apparent reason." [13]

The authors of the JAMA article established a program of tranquilizer control in a clinic in which the patients are informed of the negative aspects of the drugs they have been using. Only brief usage, if at all, during times of stress was recommended, and the hazards to daily living from diminished alertness due to drug effect were emphasized. Most patients willing agreed to stop using tranquilizers after being interviewed by the staff. Many didn't even know why they were taking the drug. The researchers found that ". . . sincere interest shown by a staff member toward a patient is good therapy." The result was a drop of 52 percent in the total number of tranquilizing pills dispensed, and a lesser decline of 33 percent in the number of prescriptions for tranquilizers written.[14]

The present situation presents a major serious medical problem. Certainly no one should base his drug prescribing on information derived from advertising and promotion. Nevertheless, studies do indicate that advertising in medical journals has an impact of some significance. It is important therefore that the advertising be scientifically accurate and complete.

At the very least, it appears to me, the FDA should give prior approval to drug ads—both prescription and over-the-counter drugs, and I have included such a provision in my comprehensive drug bill.

Many people are alarmed at the growth of a drug culture in our midst. Our people, both young and old, are becoming increasingly reliant on drugs to get them through the day and through life. The chemical solution to the task of daily living has become for many an established way of life.

This brings to mind Aldous Huxley's fantasy concept of the world of the future, the now classic "Brave New World," in which he described an uncomfortable, emotionless culture of escapism where people depended upon tablets of tranquility to eliminate the pressures of living. It was comforting to know, however, that the book was only science fiction.

What was merely fiction 40 years ago may be on its way to becoming a reality and a cause for serious concern to all of us.

FOOTNOTES

[1] "Economic Problems in Drug Distribution"—presented by T. Donald Rucker, Chief, Drug Studies Branch, DHIS/ORS, U.S. Social Security Administration at the Annual Meeting of the Pharmaceutical Wholesalers Association, Las Vegas, Nevada, March 8, 1972.

[2] This figure represents manufacturers sales. Retail sales are estimated to be about $7 billion.

[3] Research and Development in Industry 1970, NSF 72-309, p. 76.

[4] Task Force on Prescription Drugs: Final Report, February 7, 1969, Department of HEW, p. 8.

[5] *London Observer*, October 1, 1967.

[6] Roberts and Visconti: "The Rational & Irrational Use of Systemic Antimicrobial Drugs'"—American Journal of Hospital Pharmacy, October, 1972, pp. 827-834.

[7] Stolley, McEvella, Lasagna et al.: "Drug Prescribing and Use in an American Community" in Annals of Internal Medicine, April, 1972.

[8] Hearings before the Subcommittee on Monopoly of the Select Committee on Small Business, United States Senate: Advertising of Proprietary Medicines, Part 2, pp. 426-429.

[9] Charlotte Muller: *The Overmedicated Society:* Forces in the Marketplace for Medical Care. SCIENCE Vol. 176, May 5, 1972, p. 488.

[10] T. Donald Rucker: Op Cit.

[11] Hearings before the Subcommittee on Monopoly of the Select Committee on Small Business, United States Senate: Advertising of Proprietary Medicines, Part 2, pp. 558-559.

[12] *Ibid.*

[13] *Tranquilizer Control* by Arthur Kaufman, M.D., et al., JAMA, September 25, 1972, Volume 221, No. 13, pp. 1504-1506.

[14] *Ibid.*

AIRCRAFT NOISE CONTROLS: MORE DELAYS

Mr. TUNNEY. Mr. President, in the report of the Aviation Advisory Commission, submitted to the President and Congress on January 3, 1973, an entire chapter is devoted to "Noise: The Great Constraint."

The chapter begins:

By all counts, noise is the most explosive problem facing aviation today. Even a partial reckoning of the results of public opposition takes on the semblance of a disaster.

The report goes on to recommend a three-pronged attack on the noise problem: First, altered flight procedures; second, acoustical treatment of the JT3D and JT8D jet engines; and third, development by 1980 of an entire fleet of quiet jet engines.

All of these recommendations could be accomplished within present statutory authority of the FAA. Further, the Environmental Protection Agency can recommend all of these procedures within the broad mandate of the Noise Control Act of 1972—legislation which I introduced with the Senator from Maine (Mr. MUSKIE) and which passed the Senate by an overwhelming vote last session and was approved by the President on October 27, 1972.

But will the FAA or EPA act? Recent actions by the FAA would indicate that such action is not likely to be forthcoming. As I indicate in my letter of today to FAA Administrator Shaffer, an advance notice of proposed rulemaking issued last week on the subject of "Civil Airplane Fleet Noise Requirements" raises serious doubts that the FAA is meeting the mandate of section 611 of the Federal Aviation Act of 1958.

Will EPA act? I was pleased to see that EPA has protested the FAA's recent action on grounds that it violates a prior agreement with EPA and that it fails to afford sufficient relief. EPA suggests—and I would concur—that since the proposed action cannot become effective until after EPA completes its aircraft/airport study as required by section 7 of the Noise Control Act of 1972, no action should be taken on it pending the results of that study.

Of course, EPA's suggestions have merit only if the EPA aircraft/airport study, which will yield recommendations upon which the FAA must take action, will be adequate to afford sufficient relief. Last week, EPA staff came up to the Hill, twice, to brief the Senate Commerce and Public Works Committees. I attended the Commerce Committee briefing and learned there that, at present, EPA has four professionals working on standard-setting under the Noise Control Act. Although funding levels will allow for four more professionals to be hired, there is little hope that, within 9 months, an ade-

quate job can be done of the aircraft/airport study—let alone the criteria document and regulations for interstate carriers—unless more people are involved.

EPA will supplement its meager staff by means of task forces. I have requested that the Aviation Subcommittee hold oversight hearings on the aircraft/airport issue in order that we can see, first hand and before it is too late, whether enough is being done and whether additional legislation is needed.

I am hopeful that oversight hearings will be held on other aspects of the legislation as well.

In short, we can afford no more delays. Already, as the Aviation Advisory Commission report points out, capacity has had to be cut back at airports and existing airports are not able to expand. A decision by the California Supreme Court—Nestle against Santa Monica—allowing property owners to sue the city for nuisances such as aircraft noise, may eventually close down the Los Angeles International Airport. And, most basic, potential hearing damage and the obvious interference with sleep and speech from aircraft overflights can no longer be tolerated.

I ask unanimous consent to have printed in the RECORD my recent letter to Administrator Shaffer, EPA's letter to the FAA on this subject, and my prior correspondence with Administrator Shaffer on this issue, which he has requested I place in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

FEBRUARY 5, 1973.

HON. JOHN H. SHAFFER,
Administrator, Federal Aviation Administration, Washington, D.C.

DEAR JACK: I regret that our correspondence on the performance of the FAA in regulating aircraft noise will have to close, as you leave the FAA and return to private life, on a note of doubt and disappointment.

A principal reason for these sentiments is the FAA's publication, last Tuesday, January 30, 1973, of an Advance Notice of Proposed Rule Making ("ANPRM") on Civil Airplane Fleet Noise Requirements. 38 Fed. Reg. 2769–2772.

As you know, under Section 611 of the Federal Aviation Act of 1958 (49 U.S.C. Sec. 1931) as amended by Section 7 of the Noise Control Act of 1972, the FAA is charged with the duty:

"After consultation with the Secretary of Transportation and with EPA, [to] prescribe and amend standards for the measurement of aircraft noise and sonic boom and [to] prescribe and amend such regulations as the FAA may find necessary to provide for the control and abatement of aircraft noise and sonic boom. . . ."

The law explicitly states that this power shall be exercised *"in order to afford present and future relief and protection to the public health and welfare from aircraft noise and sonic boom. . . ."* (Emphasis added.)

Accordingly, it is somewhat disconcerting, to say the least, to read this ANPRM and discover that the FAA proposes to make the applicability of fleet noise limitations and the application of 14 CFR Part 36 noise standards to aircraft of types not covered by Part 36 for purposes of type certification[1] dependent on a circumstance which plainly has nothing to do with "relief and protection to the public health and welfare." in that it would exempt from the proposed rule all airplanes engaged in foreign or overseas air commerce, including flights to and from American territories or possessions.

The practical consequence of such an exemption, as I see it, would be that the "health and welfare" of those persons unfortunate enough to live near our major international airports is arbitrarily to be placed on an altogether different footing from that of persons who live near airports which handle principally domestic traffic. I know of nothing in the Federal Aviation Act, or in the Noise Control Act, which sanctions such discrimination. Indeed, it is often those who live near our major international airports who are *most* in need of relief from airport noise, not least.

Moreover, the proposed exemption for airplanes engaged in foreign or overseas air commerce is open to the disturbing interpretation that an airplane which is at *some* times used in foreign or overseas air commerce would at *all* times be exempt from fleet noise requirements and from the need to meet Part 36 standards under this proposed rule. If this reading is correct, then very large parts of the fleets of carriers having foreign or overseas routes would be exempt from the proposed rule, due to the carriers' practice of rotating their aircraft from route to route. May I ask what the FAA's estimate is of the present and future percentage of aircraft using such major international airports as those in Los Angeles, San Francisco, New York, and Boston which would be exempted from the proposed rule as being engaged in foreign or overseas air commerce, what the percentages would be of the fleets of each of the major carriers which would be exempted, and what the assumptions are which govern these estimates? The information now available to me indicates that these percentages would be substantial.

The FAA's stated rationale for this proposed exemption is that:

"The United States believes that it is preferable that environmental problems affecting international civil aviation . . . be considered initially and hopefully resolved by the International Civil Aviation Organization."

This statement raises an interesting question as to who constitutes "the United States" at this stage of the rule-making procedure. (Specifically what agencies or persons in addition to the FAA have endorsed this advance notice? I am aware of objections sent by EPA to the Director of your office of Environmental Quality on February 2, 1973. Have there been any other objections? How has the drafting of the advance notice been affected by President Nixon's reported personal assurances to British Prime Minister Heath and French Prime Minister Pompidou on January 19, 1973, that he would use his influence to oppose the setting of airport noise standards stringent enough to affect the Anglo-French Concorde SST, as now designed?[2]

How will the FAA handle comments which run counter to this expressed Presidential position? Will this position prejudice in any way the contents of the Environmental Impact Statement on the proposed rule?

There is also a very serious question in my mind as to the wisdom and the legality of the FAA's abdicating to ICAO its statutory duty to safeguard the "health and welfare" of those at and around our airports. On January 18, 1973, Secor D. Browne, Chairman of the Civil Aeronautics Board, told a meeting in Houston of the Airport Operators Council International that the problem of questions dealt with by ICAO becoming politicized is:

"Not only serious, it's almost out of control. . . . I think now, as I thought in the summer of 1971, that the United States should take a good hard look at ICAO and our share of its budget. Are we really protecting our interests? Are we getting our money's worth? I hope that the Government will take a hard look at ICAO, that we can call some of these trends to the highest level of attention within our Government. Otherwise ICAO will simply break down. . . ."

Mr. Browne's analysis of this problem is hardly one to inspire confidence in ICAO as a protector of the health and welfare of those exposed to the noise of airplanes using American airports, particularly in light of the Concorde problem referred to above. (As I pointed out in my letter of November 27, 1972, the Senate voted overwhelmingly just last October, notwithstanding this problem, to apply Part 36 limitations specifically and immediately to all supersonic transports, including the Concorde, as a condition of their using American airports.)

Another highly bothersome aspect of this ANPRM is its proposal to delete sideline measurements from the Part 36 standards which would be applied under the proposed rule. (As you know, the problem of sideline noise exposure is particularly acute at Los Angeles International Airport, among others.) Although the ANPRM states in conclusory fashion that "the FAA believes that the calculation of the takeoff fleet noise level would not be altered significantly by including sideline noise levels," the FAA has yet to make available to the public full data on the tradeoffs which may occur for particular types of aircraft between landing and takeoff noise as measured beneath the airplane, on the one hand, sideline noise, on the other. I hope that the FAA will shortly make such data available, to facilitate public appraisal of this ANPRM.

Other information which the FAA ought promptly to make public includes, with respect to each of the major types of aircraft now in use, or anticipated to be in use, including Concorde:

(a) Noise contours (not just Part 36 measurements) which result from takeoff, approach and landing, and the operating procedures used in obtaining those contours;

(b) Maximum gross weight takeoff contours, and corresponding operating procedures;

(c) Noise measurements or estimates for takeoff, approach and sideline at Part 36 measuring points, and the corresponding operating procedures;

(d) Noise as related to distance from the aircraft for

(i) maximum takeoff thrust;

(ii) initial climb thrust;

(iii) thrust after power cutback following initial climb;

(iv) thrust used on approach;

(e) Aircraft flight profiles used in conjunction with Part 36 test procedures.

I would hope that these be made public in concurrence with the environmental impact statement which the ANPRM promises on the proposed rule at the "appropriate

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[1] Part 36 requires, as a condition of type certification, that types of *subsonic* commercial aircraft introduced since 1969 produce no more than 108 EPNdB as measured on approach, take-off, and sideline, with appropriate interpolations below that figure for various weight categories. It does not now cover types of commercial aircraft introduced on the market prior to 1969, or helicopters, or general aviation aircraft weighing 75,000 lbs. or less. Further, there is no present FAA requirement that aircraft certified to meet Part 36 levels be operated to achieve them. (See the discussion of these points in my letter of November 27, 1972.)

[2] See, e.g., *Washington Post*, Feb. 4, 1973, p. A6. The Concorde in its present form is reported to make substantially more noise than would be permitted if Part 36 applied, specifically about 115 EPNdB as measured on approach, about 114 EPNdB as measured on takeoff, and about 111 EPNdB as measured at the sideline.

time." I would also hope that this "appropriate time" will come as early as possible in the rulemaking procedure, in view of the technical nature of the matters involved, and the vital need that they be fully understood by other agencies, Congress and the public.

One final point in conclusion of this correspondence; while, as you say in your letter of December 26, 1972, it may be academic by now whether the FAA has had authority over aircraft noise for fourteen years, or only four, it is clear that even prior to the enactment of P.L. 90-411 in 1968, the then Secretary of Transportation declared that in his opinion such authority did exist, and that the then Administrator of the FAA concurred. I refer you to hearings on H.R. 3400, H.R. 1416, Subcommittee on Transportation and Aeronautics, House Committee on Interstate and Foreign Commerce, 90th Cong., 1st and 2nd Sess., pp. 19, 99 (1968).

Sincerely yours,

JOHN V. TUNNEY,
U.S. Senator.

U.S. ENVIRONMENTAL PROTECTION AGENCY,
Washington, D.C., February 2, 1973.

Mr. RICHARD P. SKULLY,
Director, Office of Environmental Quality, Federal Aviation Administration, Washington, D.C.

DEAR MR. SKULLY: This letter is to confirm agreements reached among personnel of the Environmental Protection Agency, Department of Transportation and Federal Aviation Administration during a meeting on January 23, 1973 on the Working Draft of the *Notice of Proposed Rule Making*, "Aircraft Fleet Noise Levels Requirements," furnished by FAA letter of November 10, 1972. In addition, we wish to comment on the finally published *Advance Notice of Proposed Rule Making*, "Civil Airplane Fleet Noise Levels (FNL) Requirements," Notice No. 73-3.

During the referenced meeting it was agreed that the EPA would interpose no objection to release of the Notice and that prior to its release, the FAA would clarify wording to clearly indicate that permissible FAR 36 noise levels applied only to aircraft covered by the proposed regulation. The preamble to the proposed regulation would also refer to FAA and EPA studies underway to determine the feasibility of promulgating regulations to reduce noise levels presently permitted by FAR 36. Finally, the FAA agreed that they would take under advisement EPA's suggestion that some means should be established in the proposed regulation to encourage operators and owners of aircraft covered by the regulation to reduce noise levels below levels permitted by FAR 36.

The Advance Notice does not reflect the agreements reached during our January 23, 1973 meeting. In addition, it raises several questions regarding your comments against changes to the Notice suggested by the EPA. Issuing an Advance Notice will now result in the delay in issuing a final retrofit regulation which you argued would result if instead of the FNL a straightforward retrofit rule was issued covering existing aircraft not presently covered by FAR 36. In addition, although we are pleased to see an advance in the final completion date of achieving FAR 36 certification of affected airplanes from December 31, 1977 to July 1, 1978, your argument against advancing this date to December 31, 1977 as suggested by EPA was that the later date would permit consideration of refanning to achieve levels *lower* than those permitted by FAR 36 for JT8D engine powered aircraft. If this is no longer the objective of the Advance Notice we would then again propose that all aircraft presently powered by the JT8D engine achieve FAR 36 certification by July 1, 1976 and that JT3D engine powered aircraft achieve FAR 36 certification by December 31, 1977. If significant numbers of aircraft other than those powered by either the JT3D or JT8D engines are projected to be in operation subsequent to 1976, they could be covered either separately or in combination with either of the previous dates, depending upon the least adverse economic impact.

We take strong exception to exempting U.S. carrier airplanes engaged in either foreign air commerce or overseas air commerce from either the proposed FNL regulation or any other retrofit rule. The results of such an exemption could be to eliminate a significant number of B707 and DC8 aircraft for retrofitting; these are presently the noisiest aircraft in regular service and the principal contributors to high noise exposure areas around airports they serve. We do not accept the premise that aircraft noise problems will "hopefully be resolved by the International Civil Aviation Organization (ICAO)". The record of the debates and procrastination by ICAO regarding even adoption of FAR 36, which was promulgated by the United States in December 1969, is not very encouraging.

In summary, the Environmental Protection Agency has serious reservations as to the efficacy of the FNL, as presently envisioned by the ANPRM, in affording the degree of relief from noisy aircraft the public expects and available technology can permit. Further, since it is now questionable that a regulation resulting from the ANPRM could be promulgated before the EPA report on aircraft noise, required by the Noise Control Act of 1972, is delivered to the Congress in July 1973, the Environmental Protection Agency requests that no further action be taken on the FNL beyond that of obtaining interested parties views as requested by the ANPRM. The Administrator of the Environmental Protection Agency, in his letter to the Secretary of the Department of Transportation of January 26, 1973, has furnished a copy of our implementation plan, including milestone schedules, and the names of specific personnel within the Department of Transportation whom we are requesting to spend a substantial portion of their time participating in the effort to prepare the report to Congress, together with proposed aircraft noise regulations. We expect that this study will produce in addition to a number of other proposed regulations the final proposed regulations regarding retrofit of aircraft presently in service.

We are looking forward to working closely with you on this important project.

Sincerely yours,

ALVIN F. MEYER, Jr.,
Deputy Assistant Administrator for Noise Control Programs.

FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., October 20, 1972.

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR JOHN: The recent story on noise legislation in the *Washington Post* and your letter of 9 October 1972 could only give those persons reading either (the article or letter) a wrong impression. I hope this letter will correct the record on several of your points.

The Congress did not mandate aircraft noise regulations until 1968, four—not fourteen—short years ago. Since that time major advances have been made in a number of areas. The jet aircraft now entering the commercial fleet are quieter, cleaner and safer than previous models. All four of the new aircraft certificated by FAA since Public Law 90-411 are well below the permissible noise levels and provide clear evidence of the ability of American technology to solve problems when given a chance; for the record, these aircraft are the Boeing 747 with Pratt and Whitney JT9 engines, the McDonnell Douglas DC-10 with General Electric CF6 engines, the Lockheed L-1011 with the Rolls Royce RB-211 power plant and the Cessna Citation with the JT-15 from Pratt and Whitney Canada.

In addition, the new flight procedures for noise abatement are applicable system-wide, not just for Washington National Airport as you stated. Substantial progress is being made in this innovative program.

It also is important to note that the people who work in aviation live in the same environment and share the same desire to protect it as those who work in all other fields of endeavor. It is improper to infer that the forces of "good" and "evil" are locked in struggle to save or destroy the environment with the FAA leading the charge for the "other side." We are totally committed to sound environmental protection coupled with balanced, reasonable growth and development of aviation. *We can have both.* Since large numbers of your constituency are employed in aviation and share these common goals, I submit that their efforts should have special importance to you.

Quite frankly I haven't any real problem with the new noise legislation; we (the FAA) will continue to work with EPA and all others, towards our common goal of a better environment. The one genuine concern I do have is with the gross misrepresentation of what's happened in aircraft noise reduction since Congress first (in 1968) gave FAA the authority to regulate aircraft sound levels and respectfully request that you correct the record when you return after the recess.

Let me conclude by repeating for emphasis the gist of paragraph 2 foregoing. Noise is designing the world's engines and aircraft—four different aircraft companies and four different engine companies are involved in the projects listed; the facts are clear and unarguable. I trust you will acknowledge that impressive strides have already been made and more are just around the corner.

Respectfully,

J. H. SHAFFER,
Administrator.

U.S. SENATE,
Washington, D.C., November 27, 1972.

Hon. JOHN H. SHAFFER,
Administrator, Federal Aviation Administration, Washington, D.C.

DEAR JACK: A long trip to California and additional business away from Washington has delayed this response to your letter of October 20.

I regret that you feel that the FAA's record on reducing aircraft noise has been grossly misrepresented. Perhaps if I set out some of the statistics as I understand them, I can better communicate my sense—and what has been conveyed to me as the public's sense—of frustration with regard to the lack of sufficient progress to date. Let me state, too, that the Noise Control Act of 1972 will afford all of us a new and important tool in our joint effort to move faster to reduce aircraft and airport noise.

Looking at the past record, the Federal government's response to aircraft/airport operation noise problems has been "too little—too late". The criticism is as valid whether one looks at the mandate in the 14 year old FAA Act (within which noise regulations could have been established) or the specific mandate in the 1968 amendments whereby the FAA was directed to set noise levels.

Noise regulations have been promulgated to date by the FAA only for new commercial subsonic transport aircraft entering service since December 1969. At present, this covers less than 60 aircraft in a fleet of nearly 2000 aircraft. Even by 1982 the ATA projects that the proportion of these new, quieter aircraft in the total fleet will only be 34 percent. This improvement can hardly be considered responsive to the public's criticisms.

There have been no noise regulations promulgated regarding other types of aircraft, e.g., helicopters and general aviation

aircraft, although according to EPA estimates there were approximately 3300 helicopters and more than 128,500 general aviation aircraft in service during 1970.

Despite assurances by the President during the great debate on the US-SST in 1970, and your own Advance Notice of Proposed Rule Making issued August 6, 1970, we are still without a supersonic transport noise regulation. The intent of the Congress regarding this type of aircraft was made clear during the 1970 debate, and the Senate also voted overwhelmingly in favor of an amendment to the Noise Control Act of 1972 which would have banned the landing of supersonic aircraft at U.S. airports unless FAR 36 levels were met. Although this amendment was deleted in the Senate-House compromise it is anticipated that EPA's aircraft/airport study will yield a recommendation on this subject.

Retrofit/modification of the existing noisy commercial fleet has been continuously studied since about 1967 (when the NASA nacelle lining work was begun), and still no decision has been forthcoming from the FAA on a regulation requiring such aircraft to be quieted. The number of these aircraft now in commercial service is approximately 1600 and most of them will still be in use during the next ten or more years.

As you know, the Noise Control Act of 1972 incorporates changes in Section 611 of the FAA Act and empowers the EPA to propose aircraft noise and sonic boom regulations requisite to protect the public health and welfare. Because each agency is given responsibilities according to proven capabilities, it is believed that the legislation will accelerate relief to the millions of citizens suffering from the noise of aircraft and airport operations.

I look forward to close cooperation between our offices as this legislation is implemented. Should you so desire, I would be happy to insert our exchange of letters and other relevant data in the RECORD when the next session of Congress begins.

Sincerely,

JOHN V. TUNNEY,
U.S. Senator.

FEDERAL AVIATION ADMINISTRATION,
Washington, D.C., December 26, 1972.

Hon. JOHN V. TUNNEY,
U.S. Senate,
Washington, D.C.

DEAR SENATOR TUNNEY: Your response of 27 November 1972 to my letter of 20 October 1972 again leaves the impression that your information with respect to the status of the efforts and accomplishments in the area of aircraft noise reduction is either limited or inaccurate.

No real purpose is served by further discussion of whether or not the Federal Aviation Administration (FAA) could have established noise regulations four or fourteen years ago; however, it is a fact that a "finding" to the effect that the Federal Aviation Act of 1958 did not provide that authority and as a result the FAA actively sought legislative action to control and abate aircraft noise and sonic boom.

Public Law 90-411 provides this authority and in response FAA considered it most important to direct its initial efforts to stopping the escalation of aircraft noise; hence, Federal Aviation Regulation Part 36 was developed to "put a lid" on aircraft noise. As I noted in my previous letter, this has been accomplished very effectively with the new generation of aircraft entering the fleet at appreciably reduced noise levels. What is not generally realized is that FAR 36 also had a significant impact on the previously certificated aircraft models.

Historically, the growth versions of these aircraft have constituted the bulk of the aircraft sales and with growth the noise levels have increased. FAR 36 addressed this problem by requiring demonstrations that the growth was, in fact, accomplished without an increase in noise.

The FAA has taken action on more than 100 such certifications to date. Since these provisions were applied to successive pre-1 December 1971 models of the B-747 aircraft as well as other commercial aircraft it is apparent that considerably more than 60 aircraft in the current commercial fleet have been impacted by FAR 36.

Your statement regarding regulations dealing with helicopters and general aviation aircraft again does not reflect the true status of these regulatory activities. Project reports on both of these classes of aircraft are completed for rule drafting by our Office of General Counsel. In fact the general aviation regulatory activity is quite advanced on an international as well as domestic front as a result of an extensive series of aircraft tests conducted by the FAA which were culminated this summer. Our regulatory recommendations in this area should be published during the first half of 1973.

Our regulatory action proposing standards for supersonic transport aircraft is even further advanced and was receiving top level agency review at the time of debate on the Noise Control Act of 1972. This review has been completed and publication is pending the finalization of interagency coordination now in progress.

The question of acoustic retrofit or modification of existing aircraft also appears to be poorly understood and should be placed in proper context. This issue is not being "continuously studied" just for the sake of study but has been rationally developed to form a proper technical base for logical rule making. The excellent investigation of the National Aeronautics and Space Administration completed in 1970 did provide proof of the nacelle acoustic lining concept but did not provide certificable airline configurations nor did it address the acoustically more difficult question of quieting JT8D powered aircraft. Concurrent with the completion of the NASA study, the FAA contracted for and completed the Rohr retrofit economic study which indicated the order of magnitude of the airline economic impact.

Including these two studies in the technical base for rule making the FAA was then able, in October 1970, to issue an Advance Notice of Proposed Rule Making dealing with acoustic retrofit of the existing fleet. Simultaneously we sought Congressional funding support for and issued Request For Proposals seeking to resolve the certificability and JT8D powered retrofit issues. These final retrofit feasibility studies went into contract in mid-1971 and are now sufficiently advanced that we believe our rule making base to be adequate for issuance of regulatory proposals. These proposals are also in the final stages of intra-governmental coordination and rule issuance is imminent.

As I stated in my previous letter, we will work with all interested parties toward the common goal of a better environment. Accordingly, I would very much appreciate your insertion of our exchange of letters into the Record early in the 93rd Congress.

Sincerely,

J. H. SHAFFER,
Administrator.

THE MAYORS VIEW THE BUDGET—WITH ALARM

Mr. HUMPHREY. Mr. President, on February 4, 1973, the National League of Cities and U.S. Conference on Mayors released an analysis of the fiscal year 1974 Nixon budget from the perspective of how that budget will impact urban areas.

The mayors pose the critical question for the Nixon administration: The new Federal budget requires the cities to mark time—mark time for new social spending, for new housing, for pollution control equipment, and so on. Can the cities afford to mark time?

The mayors' analysis quickly points to the glaring inconsistencies in the Nixon budget. It shows, for example, that while the President talks about shifting political power to local government, the actual effect may be to force the cities to bear a disproportionate share of the economic burden of overcoming inflation and Federal deficits. And, the mayors' analysis clearly indicates that one likely effect of the President's budget will be to force a tax increase at the State and local level.

Said the mayors:

The deep cuts in the Budget will affect vital city programs. These cuts will be felt first and sharpest by minority groups and the poor.

The mayors continue:

With the magnitude of cuts, recessions, and termination of the federal categorical programs proposed in the FY 74 budget, the cities will find themselves far behind their positions last year, before General Revenue Sharing was enacted.

The fact is, Mr. President, that the Nixon budget is—as I have said—one of deception, deficits, neglect, and domestic disengagement. The document I am inserting in the RECORD today amply proves that description.

Mr. President, I ask unanimous consent that an article from the Washington Post entitled "Mayors' Group Attacks Fund Cuts as Harmful," and the complete text, including tables, of the publication entitled "The Federal Budget and The Cities," be printed in the RECORD.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

MAYORS' GROUPS ATTACK FUND CUTS AS HARMFUL

(By Susanna McBee)

The nation's mayors have fired a stinging volley of criticism at President Nixon's new budget proposal, charging that its cuts in domestic spending will harm cities.

In a strongly worded 79-page analysis of the budget, the National League of Cities and the U.S. Conference of Mayors insist that the "deep cuts . . . will be felt first and sharpest by minority groups and the poor, and therefore, will hurt cities as a whole."

The critique, released today, coincides with a meeting this afternoon of 15 mayors in New York City to map strategy for fighting the cuts. The mayors are members of the conference's Legislative Action Committee. The league and conference represent nearly 15,000 municipalities.

Their analysis is a sharp contrast to the rather mild initial league-conference response to the budget. That statement generally supported the President's intention to shift responsibilities for various spending programs to cities and states.

It simply warned that, "we don't want the transition to fail because of inadequate planning or funding."

The new analysis, however, not only attacks specific cuts such as those in the Public Employment Program, model cities, and urban renewal, but it also questions the President's entire economic philosophy.

"To fight inflation the President had a clear choice either of holding down public spending by restraining the federal budget, or of dampening private spending by raising taxes and encouraging the Federal Reserve System to tighten the money supply," the report observes.

"He chose to hold down the public sector at the expense of certain public needs. Now money spent by individuals may feed inflation. Further, his choice creates unemployment at all levels of the public sector, especially in those cities with a large PEP and human resources staff.

"Thus, while talking of shifting political power to local government, the President actually may have displaced onto the cities a disproportionate share of the economic burden of overcoming inflation and federal deficits."

The report added that, "while talking of not raising federal taxes," the President may be forcing cities to raise local taxes.

It also accused the administration of breaking a promise Mr. Nixon made to a group of mayors, county officials, and governors in an August, 1969, meeting at the White House.

The promise was that revenue sharing, which was finally passed by Congress last year, would not be a substitute for the money localities were already getting from the federal government for specific programs.

Yet the budget explains the elimination of federal funds for such programs as open space, community action agencies, and library aid by saying that localities can pick up the tabs, if they want, with their revenue-sharing funds, the league-conference report notes.

Because of the magnitude of the cuts, it contends, "the cities will find themselves far behind their position last year, before general revenue sharing was enacted."

The report says the cuts in the model cities, urban renewal, and Public Employment Program (under which more than 230,000 unemployed persons have been given jobs in the last two years) "represent $2.5 billion in lost momentum for local governments."

It adds that "by slowing federal spending, the President is asking state and local governments to mark time until he can change the system." But the report raises the question: "Can the cities mark time?"

The report also laments the President's cuts in health, federally assisted housing, and school aid to areas "impacted" with federal installations. Recalling that Mr. Nixon termed his 1973 health proposal a "maintenance" budget, the league-conference analysis labels the 1974 proposal, which is 11 per cent higher, a "withdrawal" budget because of its cuts in construction and manpower training.

The league and conference again endorse the President's idea of consolidating some 70 federal grant programs into what he calls special revenue sharing in broad areas of urban community development, education, manpower training, and law enforcement.

However, the report says, "Mayors . . . will have to wait and see whether this actually translates into more authority for the states but less authority for the cities. Early signs are not favorable" to cities, it concludes.

It points out that where funds from the Law Enforcement Assistance Administration were first distributed, they went mainly to state highway patrols "with little left over for local police departments."

In underlining its concern that switching to the new grant system may bog down in managerial and funding problems, the report warns that if the momentum cities have been building to deal with human needs is lost, the "viability of cities may be lost as well."

"That would be too great a price to pay," it insists.

THE FEDERAL BUDGET AND THE CITIES

OVERVIEW

President Nixon has presented to Congress an austere Budget for next fiscal year that he says is designed to slow inflation, avoid tax increases, and revamp the Federal grant system.

The dollar and programmatic impact of the $268.7 billion in outlays that the President seeks for FY 74 will be uneven from city to city across the land and from agency to agency in the Federal establishment.

In dollar terms, there will be gains in law enforcement and mass transit, but losses in housing, community development, and manpower. The President will not spend water pollution control money in the amount Congress has authorized.

In program terms, the Public Employment Program (PEP), urban renewal, Model Cities, the Hill-Burton hospital construction program, the Community Action program, certain major education efforts, and some other familiar categorical grant programs are to be discontinuted.

In the fields of urban community development, education, law enforcement, the manpower training, the President proposes again—as he did in the previous two years—to consolidate some 70 categorical grant programs into what he calls special revenue sharing. He dropped from the FY 74 Budget earlier proposals to create special revenue sharing for transportation and rural community development.

His Budget documents that he clearly intends to limit the public sector's share of the nation's output, to reduce the role of the Federal government, and to shift more of the burden for public policy decisions to local and state governments.

An innovation in the FY 74 Budget is a projection of spending needs for the next successive year. The object is to show that budgetary discipline in the coming year will reduce the deficit in FY 74 and even yield a slight surplus in FY 75—assuming full employment.

The Budget this year, in effect, confirms the impoundment of critical FY 73 money and stretches out other funds into FY 74. The President states that the impoundments and stretch-outs are part of his plan to revise the Federal system.

The cuts in PEP, Model Cities and urban renewal commitments represent some $2-1/2 billion in lost momentum for local governments that would have boosted their local economies during the next fiscal year.

By slowing Federal spending, the President is asking state and local governments to mark time until he can change the system. Whether this is realistic in the context of the dynamic situation of the year 1973 poses the question: Can the cities mark time?

The goals for the FY 74 Budget are set forth in the accompanying Presidential Message:

"High-employment prosperity . . . without inflation and without war . . . (A) change in direction demanded by the great majority of the American people. . . . (A) leaner Federal bureaucracy, increased reliance on state and local governments . . . greater freedom for the American people to make for themselves fundamental choices about what is best for them."

The message throws the gauntlet before Congress with these words:

"The surest way to avoid inflation or higher taxes or both is for Congress to join me in a concerted effort to control Federal spending. I therefore propose that before Congress approves any spending bill, it establish a rigid ceiling on spending, limiting total 1974 outlays to the $268.7 billion recommended in this Budget."

To fight inflation, the President had a clear choice either of holding down public spending by restraining the Federal Budget, or of dampening private spending by raising taxes and encouraging the Federal Reserve System to tighten the money supply. He chose to hold down the public sector at the expense of certain public needs. Now money spent by individuals may feed inflation. Further, his choice creates unemployment at all levels of the public sector, especially in those cities with a large PEP and human resources staff.

Thus, while talking of shifting political power to local government, the President actually may have displaced onto the cities a disproportionate share of the economic burden of overcoming inflation and Federal deficits. And while talking of not raising Federal taxes, the President also may be increasing the burden on the tax sources the cities depend on to maintain existing services and facilities, some of them supported heretofore by Federal funds.

The Administration is unified in its drive to cut Federal spending and restructure the Federal system. A number of different explanations of program terminations emerged from the Budget documents and a long weekend of departmental briefings of press and public interest group representatives before the Budget was formally transmitted to Congress. We report some of the explanations because they reveal Administration thinking, not because we agree with it:

A number of social programs are being phased out because "current programs don't benefit poor people"—as in the Federally-assisted housing programs.

Urban renewal is being phased out because "social and economic problems . . . cannot be solved through physical development projects."

"While serving as a vehicle for demonstrating the value of local decision making, the Model Cities program does not have a significant enough impact on social and economic problems nationally to justify continued funding as a separate program."

Construction grants for community mental health centers will be ended because they are demonstration programs that have proved their worth to the point that state and local governments now can assume this effort.

During the major press briefing on the Budget, Caspar W. Weinberger, outgoing Director of the Office of Management and Budget and Secretary-designate of the Department of Health, Education, and Welfare, had this to say on special revenue sharing:

"There is a feeling in Washington that categorical programs is the way to go. That feeling is not shared in the country. . . . The decision (on special revenue sharing) is based on programmatic rather than budgetary considerations."

And the *Washington Post* editorialized: "There is more at stake in this year's Budget than money."

Detroit Mayor Roman S. Gribbs, President of the National League of Cities, and Houston Mayor Louie Welch, President of the U.S. Conference of Mayors, commenting on the same point, said:

"The President has submitted more than a budget. . . . He has proposed a restructuring of the Federal system, a reorganization of the Federal government, and a shifting of responsibilities to state and local governments. You cannot analyze this Budget only in terms of program dollars. . . .

"There will be a massive transition from one system to another.

"We Mayors have to manage our cities. We have programs and commitments to the people we serve. We recognize and support many of the President's objectives, but we don't want the transition to fail because of inadequate planning or funding. . . .

"[And] we don't want the people of our cities to suffer because they are asked to

bear a disproportionate share of attempts to fight inflation."

The Budget includes a number of references to decentralizing decision making to state and local governments. Mayors and other city officials will have to wait and see whether this actually translates into more authority for the states but less authority for the cities. Early signs are not favorable. There is a budget proposal, for example, to funnel funds for Sec. 701 of the Housing Act to the states, rather than directly to cities, metropolitan councils of governments, and other regional planning agencies, as has been the case so far.

The concept of Special Revenue Sharing is embedded in the Budget. But the formulas for fund distribution are not presented, nor are the funding channels. Early experience with LEAA funds, which went mainly to state highway patrols, with little left over for local police departments, should be remembered in discussions about grant consolidation in the criminal justice and all other areas.

In the pages that follow, we trace the program and dollar impacts of the FY 74 Federal Budget. It can be characterized, from the city viewpoint, as a Budget of much change, many deep cuts, and little growth. The drive to control inflation is needed, and we support it. The cities, too, are being dealt a cruel blow by inflation.

The deep cuts in the Budget will affect vital city programs. These cuts will be felt first and sharpest by minority groups and the poor, and, therefore, will hurt cities as a whole. Mayors and other city officials will have to bear the brunt of public reaction to the phase-out and stretch-out of those programs. It will be small comfort to them that programs in other sectors also are being cut.

The long-run support of city governments, and of their taxpayers, for the needed intergovernmental reforms will depend on how well the transition to the new grant system is managed and funded. Momentum has been building in the complex urban programs that are intended to deal with real human needs. If that momentum is lost, then money would be saved, it is true. But the viability of cities may be lost, as well. That would be too great a price to pay.

GENERAL REVENUE SHARING

State and local governments worked relentlessly last year with the Administration and the Congress to fashion a general revenue sharing law that would relieve the constant push for higher property taxes created by growing demands for governmental services deliverable at the local level. Cities especially felt the bind because they depend on property taxes, a slow-to-grow source of revenue. They have been forced to provide a greater level of services because of the very nature of urbanization.

In August, 1969 at the White House, Mayors, county officials, Governors and the President reached agreement to support general revenue sharing. They explicitly agreed that general revenue sharing was not to be a substitute for ongoing Federal categorical programs.

Consistent with this understanding, the President in his Budget Message cites revenue sharing as something that "will help state and local governments avoid higher taxes." Unfortunately, in other parts of the Budget and in the material prepared by Federal departments to accompany their budget briefings, the President's promise to the Mayors and Governors has been breached. Revenue sharing is cited as a substitute for categorical programs.

Explaining the termination of grants for local community action programs, the Budget states:

"If constituencies of individual communities desire to continue providing financial support to local community action agencies, general and special revenue sharing funds could be used."

The rationale given for phasing out open space land programs reads:

"Provision of local open space is a low priority use for Federal resources, since benefits accrue to local residents and should be supported from local financial resources. Local communities may continue to provide public open space through the use of Federal shared revenues."

The HEW briefing materials cover the cutoff of grants for public libraries as follows:

"With the increasing availability of general revenue sharing funds, it is expected that states and localities will be able to continue the most promising projects and programs formerly supported by Federal categorical assistance programs."

While it cannot be assumed that the proposed budget cuts would not have occurred if general revenue sharing had not been enacted, it is distressing to read that Federal officials rationalize cuts in categorical programs because of the availability of general revenue sharing. We hope the President and his staff will bring the promise of August, 1969 to the attention of all Federal policy makers.

With the magnitude of cuts, rescissions and terminations of Federal categorical programs proposed in the FY 74 Budget, the cities will find themselves far behind their position last year, before general revenue sharing was enacted.

Special revenue sharing and grant consolidation

As part of his program to "revitalize" our federal system the President again proposes the creation of special revenue sharing programs in the 1974 Budget. Seventy categorical grant programs are to be grouped under four subjects: education, law enforcement, urban community development and manpower training.

Special revenue sharing budget authority, first full year

Description:	*In billions*
Urban community development	$2.3
Education	2.5
Manpower training	1.3
Law enforcement	.8
Total	6.9

Some $6.9 billion is proposed for special revenue sharing the details of which are discussed below with the analyses of the proposed budgets for the programs they incorporate.

The terminology "special revenue sharing" is often confused with "general revenue sharing", and the distinction between the former and block grants is also difficult to explain. The three can be distinguished by their relative freedom from requirements.

General revenue sharing provides funds to be used at local discretion without strings, distributed according to a formula and without need for an application.

Special revenue sharing may have a formula, it may require an application, and the funds must be spent within a broad subject area, such as law enforcement, but no prior Federal approval is required to use it for any of a large number of activities under that heading.

Block grants will require an application, may require prior Federal approval, will be subject to more Federal control over program details than special revenue sharing but far less than the old-fashioned categorical programs for which a Federal official must approve everything from the cost of the land to the style of the housing and its plumbing.

CITY SURPLUSES (SO-CALLED)

One notion that gained currency in Washington while the Budget was being compiled was that state and local governments are both accumulating surpluses. There was talk that general revenue sharing would cause great surpluses in state *and* local governments while "impoverishing" the Federal government. This is very misleading talk.

There are four fallacies in such reports.

First, they are from data which lumps together states *and* local governments, including counties and independent districts. The data do not depict the cities' positions alone. If the states have large surpluses—and many do—their city deficits are subtracted out and lost in the aggregation. But state surpluses will not pick up city garbage.

Second, the data in the reports combine social insurance funds with operating funds. Surpluses have grown steadily in employee retirement and cash sickness compensation funds. But social insurance funds are not available for use except for their special purposes. The cities cannot hire personnel with money from pension plans.

Third, these reports ignore the fact that the data they cite come from the Department of Commerce Bureau of Economic Analysis where the definition of surplus is based on the national income accounting (NIA) concept and not on income and expenditures as shown in city budgets. NIA includes money spent on goods and services. But city and state land purchases, for example, are not considered purchases contributing to the gross national product which is part of NIA. While they are shown as expenditures in a city's budget, land purchases are excluded from the national income accounts. The city cannot spend the money twice.

Fourth, according to Department of Commerce sources, national income accounting does not provide a good measure of the financial health of states or local governments. It was not intended to. It just measures the contribution of various types of activities to the total national output of goods and services. The city health center can't take someone's temperature with a gasoline gauge.

The October 1972 *Survey of Current Business*, published by the Department of Commerce, Bureau of Economic Analysis (BEA), is often quoted as the source of information about state and local surpluses. Unfortunately, some who cite it ignore qualifications that were properly included in that report. One caveat that ought to be emphasized states:

"It should be recognized that even though the aggregate budget position has improved, many individual states and localities continue to face severe fiscal problems."

What is the picture in the long run? The Bureau report includes this caution on projections:

"Although the fiscal outlook for state and local governments is brightening, there are reasons to believe that the extremely large surpluses suggested for the long run by some recent studies may not be realized. Expenditure growth is likely to pick up and the growth of receipts other than from revenue sharing may be slowed."

This last point becomes clearer in view of the way that states and local governments go about making up their budgets. Most are required by law to balance their books each year. So, in many cities, a year-end fiscal surplus is a legal requirement, rather than a revenue windfall.

BUDGET HIGHLIGHTS

Drug abuse

Funding levels will be about the same in FY 74 as in FY 73. Prevention activity responsibility will be assumed more and more by the National Institute of Mental Health (NIMH). Spending on law enforcement will go up.

Education

Education funding levels will be cut $277 million. Title I of Elementary and Secondary Education Act (ESEA)—targeted on disadvantaged children—aid to Federally-impacted school districts, vocational education, and some other programs are to be "folded into" what the Administration calls Education Special Revenue Sharing (grant consolida-

tion). Library Services aid is to be ended. Head Start will be somewhat increased. Follow Through will be phased out.

Environment

Congress has authorized budget authority of $11 billion for FY 73 and FY 74 for construction of municipal waste water treatment and water pollution control facilities. The President says he will permit obligation of only $5 billion for that purpose. Federally supported solid waste management projects will be virtually ended. Federal grants for open space will be more than halved.

Health

Facilities construction programs for hospitals (Hill-Burton) and community mental health centers will not be renewed. Comprehensive health planning spending will be increased somewhat. The Center for Disease Control targets venereal disease for major effort—but its budget will be cut 15%. Comprehensive health project funding will remain level. Programs to deal with rats and lead-based paint poisoning face eventual phase-out.

Housing and community development

The budget for the Department of Housing and Urban Development (HUD) is down 36% in new appropriations requested and 26% in new program commitments from FY 73. Urban renewal, Model Cities, open space, neighborhood facilities, rehabilitation loans, basic water and sewer grants, and public facility loans all are proposed for consolidation into what the President calls Urban Community Development Revenue Sharing. The Budget asserts, but does not substantiate, that there will be enough money in the pipeline to support urban renewal and Model Cities until the block grant program is to begin in July, 1974. Sec. 701 Comprehensive Planning funds, a mainstay of regional councils, will be funneled through Governors, instead of going directly to cities and metropolitan areas. The Budget shows no funds available for new housing commitments in the next 17 months.

Law enforcement

The funding level next year is up 4% from this year. The President proposes to consolidate law enforcement assistance (LEAA) grants into Special Revenue Sharing.

Manpower

The Administration will not ask extension of the Emergency Employment Act, which would wipe out the Public Employment Program (PEP). The President wants to create Manpower Special Revenue Sharing, but he plans to do so administratively rather than seek new Congressional authority. The Budget asks for no summer youth program funds, saying that cities will have to fund such efforts from Special Revenue Sharing.

Office of Economic Opportunity (OEO)

The agency is to be dismantled, community action agency operations support to be halted, and funds for OEO-managed research, health, community economic development, migrant workers, and legal services to be transferred to other Federal agencies. Whether a local Community Action Agency will continue to operate in FY 74 will be up to local governments.

Transportation

Urban mass transportation will be funded at $1 billion, about the same as in FY 73; obligations for capital facilities will increase slightly. Highway programs for urban areas will be funded at $800 million in FY 74, compared to $645 million this year. Grants-in-aid for airports will stay at the same level as this year.

Veterans

No appropriation is requested for the Veterans Cost of Instruction provision of the Higher Education Act, thus ending a key means of making the GI Bill work in cities.

Welfare

Increases in Social Security, adult public assistance, and medical assistance cash payments will be somewhat offset by cuts in managed social services programs, including those for the elderly.

DRUG ABUSE*

Since figures for 1973 obligations for drug abuse prevention activities were not given, a complete comparison between 1973 and 1974 cannot be made. However, a spokesman at the Special Action Office for Drug Abuse Prevention has indicated that while some funds will be transferred among agencies, funding levels for both years will be approximately the same. In 1973 the total effort amounted to $783.6 million and in 1974 it will total $784.7 million. An exception will be project grants of the National Institute of Mental Health (NIMH) which will increase to $159.4 million.

The Community Mental Health Centers Act will be allowed to expire on June 30, 1973. It has been emphasized, however, that staffing grant commitments to existing centers will be honored between now and 1980.

NIMH will increasingly handle most of the drug abuse prevention activities. One of the major activities in 1974 will be an assessment of ongoing treatment and prevention programs. Those considered necessary and effective will be transferred to NIMH. Such Law Enforcement Assistance Administration treatment projects are specifically designated for transfer. OEO programs will also be transferred to NIMH.

The states will have greater influence. The contract mechanism for purchasing additional treatment capacity from competent sources wil be expanded. These contracts will be executed through the states, when possible, to be distributed according to need.

LAW ENFORCEMENT

Total obligations in drug abuse law enforcement were $228 million in 1973 and estimated to be $257 million in 1974.

Two agencies in Department of Justice, Law Enforcement Assistance Administration (LEAA) and Office of Drug Abuse Law Enforcement (ODALE) affect cities the most directly. LEAA's obligations were $36.3 million in 1973 and are estimated to be $44.1 million in 1974. ODALE's were $2.2 million in 1973 and are estimated to be $6.7 million in 1974. LEAA's Treatment Alternatives to the Street Crime program is operational in three cities. Up to 19 cities may be participating in 1974.

DRUG ABUSE PREVENTION

Obligations specifically earmarked for drug abuse prevention programs will be $419 million in 1974. Of this amount, National Institute of Mental Health will have more than half, $242 million, as it has had in previous years.

Other agencies which have particular relevance to local programs are Special Action Office for Drug Abuse Prevention with $67.2 million and LEAA with $1.3 million.

Almost $100 million will be requested for the Department of Defense and the Veterans' Administration.

Obligations for other drug abuse prevention programs such as bloc grant and financing programs will be $109 million in 1974.

In all program areas NIMH will have the greatest amount of funds. The breakdown by program is as follows:

Treatment and rehabilitation

$1974 obligations will be $274 million.

Research

1974 obligations will be $64 million.

Training

1974 obligations will be $23 million.

Planning and coordination

1974 funding is estimated at $29 million. In 7973, $15 million was provided to the States for comprehensive planning and prevention activities and this amount will be matched in 1974.

Education and information

1974 obligations will be $21.5 million.

Evaluation

1974 obligations will be $8 million.

ECONOMIC DEVELOPMENT ADMINISTRATION

The Economic Development Administration (EDA) will be terminated by June 30, 1973, and much of its work taken over by the Department of Agriculture, if the President's plan is put into effect. Involved in the shift to the Department of Agriculture from the Department of Commerce, which now houses EDA, is $200 million for community, commercial, and industrial development, and $110 million for commercial facilities in FY 74.

The Administration originally proposed to consolidate these and similar programs under the umbrella of rural development special revenue sharing, but this plan has been shelved. Instead, the Budget proposes to shift EDA activities to the Department of Agriculture "as part of its activities under the Rural Development Act."

The Budget goes on to say that the Small Business Administration's loan programs will increase 30% or $600 million to stimulate private investment in economic development. And the Bureau of Indian Affairs is to provide $25 million for Indian projects similar to EDA kindred programs for Indians.

The Administration says it will make $98.2 million available in FY 73 to phase out EDA. FY 73 funds will permit financing of projects that already are in an advanced stage of planning.

TABLE EDA-I.—ECONOMIC DEVELOPMENT ADMINISTRATION (EDA)

[Dollars in millions]

	Fiscal year 1972	Fiscal year 1973	Fisca. year 1974	Change
Program level	$284.2	$314.2	0	−$214.2
Outlay	165.8	267.0	$230.7	−36.3

The Federal involvement in Regional Action Planning Commissions also is to be completed by June 30, 1973, though the Appalachian Regional Commission will continue to operate under separate legislation.

The Budget calls for no reduction of previously made grants, contracts, or awards involving these multistate commissions. If the participating states wish to keep the commissions alive, they may do so under their own auspices.

Moreover, the Department's Budget briefing materials say that, in addition to revenue sharing funds, an extra $10 million is being requested for HUD's planning and management assistance programs so that states may use that sum to support their participation in the commissions.

TABLE EDA-II.—REGIONAL ACTION PLANNING COMMISSIONS

[Dollars in millions]

	Fiscal year 1972	Fiscal year 1973	Fiscal year 1974	Change
Program level	$37.7	$44.5	0	−$44.5
Outlay	27.2	36.6	$20.0	−16.6

EDUCATION

The stated assumption behind the Administration's budget request for the Office of

*Funds for alcoholism treatment are discussed under the section dealing with health.

Education (OE) is that elementary and secondary education is a responsibility of states and localities and that the proper Federal role is that of research and innovation. Cutbacks in elementary and secondary education programs, decentralization and decategorization through education special revenue sharing, and increased funding for higher education are the major thrusts of the OE Budget.

In its attempt to hold spending down, the Administration is sending to Congress a revised FY 73 budget for education. This estimate requests reductions totaling $128 million. It not only reduces the budget request for programs which have not yet received an appropriation, it also requests Congress to withdraw some funds that have already been appropriated. (This negative appropriation is called a "recission.") Included in the reductions are $12 million for the Title I aid to disadvantaged children program and $3 million for the Library Services program of the Elementary and Secondary Education Act (ESET), $36 million in Educational Development, and $44 million in Higher Education. The revised FY 73 request, however, also asks for an additional $1,120 million for the Basic Opportunity Grants programs, which received $558 million in a supplemental appropriation last fall.

The FY 74 budget request for OE programs totals $5,098 million, which is $277 million less than the revised FY 73 budget estimate and $183 million less than the FY 72 budget.

Education special revenue sharing, which would consolidate the major elementary and secondary education programs, is again proposed as a priority, but at a funding level lower than last year. There are several reasons for this reduced request. First, two programs—Library Services and Strengthening State Departments of Education—are not included this year. Second, the impacted aid program is being substantially reduced by the elimination of the "B" program which provides money for children whose parents work but do not live on Federal property. Finally, no hold-harmless funds are proposed.

Most of the other programs to be replaced by education special revenue sharing including ESEA Title I are to be kept at the revised FY 73 level.

While Library Services and Strengthening State Departments of Education are not included in special revenue sharing, they are to be terminated in their form as categorical programs. The reason given for eliminating the former program is the Administration's desire to focus on the broad educational objectives of special revenue sharing. It is argued that special revenue sharing funds could be used for school libraries. The reason given for terminating the other program is that the states should be able now to maintain their own agencies.

Other programs which are to be terminated, phased out, or substantially reduced include: Public Libraries, Follow Through, and special programs under the category of Educational Development, including some training programs under the Education Professions Development Act, Dropout Prevention, Drug Abuse Education, Environmental Education Projects, and Health and Nutrition Projects. The Public Libraries program is being eliminated because it is believed that substantial progress has been made by the states in providing library funds and because they are expected to continue to do so, especially in view of the availability of general revenue sharing. Follow Through is to be phased out over the next few years because it is believed that sufficient attention has been focused on this problem and that states and localities will continue to work in this area. Local support is also expected for Drug Abuse Education.

While a number of elementary and secondary education programs have been reduced, Adult Education special projects, Education for the Handicapped special projects, Teacher Corps, Right-to-Read remain at approximately the FY 73 level. Head Start increases slightly. The Bilingual Education program is continued at the revised FY 1973 level, which is a reduction of about $6 million from last year's FY 73 estimate. However, Bilingual Education under the Emergency School Aid program is budgeted at $10 million. The total FY 74 funding request for Emergency School Aid is $271 million. This is the same amount appropriated by Congress for FY 73, but it is substantially less than the $1 billion requested by the Administration last year for FY 73 and authorized by law for FY 74.

The cutbacks in elementary and secondary education programs are only partially offset by increases in other programs. The largest increases occur in higher education and the National Institute of Education. The Administration is emphasizing aid to individuals, partly at the expense of institutional aid and categorical training programs, by requesting full funding for the Basic Opportunity Grants. It also is emphasizing educational research by requesting more money for the National Institute of Education, established last fall.

A final initiative proposed by the Administration is a tax credit for pupils attending non-public schools. Although it does not appear among the OE programs, it would provide an additional $300 million in FY 74 for elementary and secondary education.

COMMENT

The impact of the FY 74 budget request on cities is somewhat difficult to assess at this time because the details of the education special revenue sharing proposal are not known. Folding vocational education into special revenue sharing will probably mean the elimination of the earmark for disadvantaged students, which has helped channel more vocational education funds into cities since its enactment. The amount proposed for educationally deprived children would remain at the FY 72 level. The fact that it does not increase during a time of rising costs means an effective reduction in support for this essentially urban education program. The funds for the disadvantaged under special revenue sharing will probably pass through directly to localities as provided in last year's special revenue sharing proposal. However, without information on how children are to be counted and how the distribution formula will work, it is impossible to assess the impact of the proposal.

In terms of overall support for elementary and secondary education, it is clear that the reductions in impacted aid and special programs directed at urban education problems and the elimination of the library program, will mean less money for the cities at a time when they are finding it increasingly difficult to maintain an adequate, not to speak of a quality, level of education services.

TABLE ED-1.—EDUCATION

[Budget authority in millions of dollars]

	Fiscal year—				
	1972 actual	1973 revised estimate	1973 conference report	1974 authorization	1974 budget request
PROGRAM					
A. Education special revenue sharing		[1] (3,237)			2,771
1. Educationally deprived (ESEA I)	1,597	1,585			
		[1] (1,598)	1,810	(2)	(1,585)
2. School library research (ESEA II)	90	90	100	(2)	0
3. Supplementary services (ESEA III)	146	146	171	(2)	146
		38			
4. Strengthening State departments (ESEA V)	33	[1] 43	53	(2)	0
5. Impacted aid (A & B programs)	613	431	681	(2)	[3] (227)
6. Education for handicapped (State programs)	38	38	65	(2)	(38)
7. Vocational education programs	475	475	534	749	(475)
8. Adult basic education programs	51	51	75	(2)	(51)
9. School lunch program (DOA)	244	225			(244)
10. Hold harmless		0			
		(224)			
EDUCATION					
B. Other elementary and secondary education programs:					
1. Emergency school aid	[4] 93	[5] 271		1,000	271
		[1] (1,000)			
2. Bilingual education (ESEA, III)	35	35			
		[1] (41)	60	(2)	35
3. Follow through (EOA)	63	[6] 58		70	41
4. Education development:					
(a) Teacher Corps	38	38	38	38	38
(b) Drug abuse	13	12	14	(2)	3
(c) Dropout prevention	10	9	10	(2)	4
		[1] (10)			
(d) Other	179	134	117		
		[1] (170)	[6] (81)	(2)	90
5. Handicapped-special programs	78	94	97	(2)	94

	Fiscal year—				
	1972 actual	1973 revised estimate	1973 conference report	1974 authorization	1974 budget request
C. Public libraries	59	33	85	212	0
D. Higher education	1,448	[7] 1,697			1,748
E. Office of Education	5,281	5,374			5,098
	[1] (5,832)	[1] (5,886)			
F. National Institute of Education		[5] 110		[5] 555	162
G. Headstart	369	[5] 393		500	407

[1] Indicates last year's budget estimates.
[2] Authorization expires June 1973.
[3] This request is for the "A" program; no funds are requested for the "B" program. An additional $60,000,000 not shown is requested for children whose parents both live and work on Federal property and whose education is furnished by a Federal agency. It would not be part of education special revenue sharing.
[4] Includes civil rights education.
[5] Funds provided in a supplemental appropriation.
[6] Combined authority.
[7] $578,000,000 provided in a supplemental appropriation, balance still pending.
[8] For 3 years.

ENVIRONMENT

The 1974 Budget for Federal environmental programs represents a substantial increase in anticipated responsibilities for state and local governments for environmental quality and a corresponding decrease in Federal involvement.

This will occur despite an increase in the Environment Protection Agency's total budget authority from almost $417 million in FY 73 to $515 million in FY 74 (excluding contract authority for constructing water pollution control facilities). Outlays for all EPA pollution control and abatement programs will increase by $980 million in FY 74 to a total of $2.1 billion, because of previous commitments now coming due. But actual new obligations will decrease from $5.33 billion in FY 73 to $4.88 billion in FY 74.

Most significantly, the President has ordered EPA to allocate (budget authority) only $5 billion out of an available $11 billion for FY 73 and FY 74 Federal grants for construction of municipal water pollution control facilities. Federal air and noise pollution control and abatement activities will also be cut back.

The Federal solid waste program will be virtually terminated, placing almost complete responsibility for solid waste management, recycling, and resource recovery on local government and private industry.

Federal grants to state and local governments for recreational areas, parks, open space, etc. will be more than halved.

There will, however, be a significant increase in funds budgeted for energy research and development programs, gain of almost $240 million from FY 72 to an estimated $772 million in FY 74. A central fund for energy research and development will be established in the Department of the Interior for nonnuclear energy research.

WATER POLLUTION

The Federal Water Pollution Control Act Amendments of 1972 made significant changes in the national effort to clean up water pollution. The standards for water quality and effluent limitations to obtain clean water were toughened; rigid deadlines were imposed; more activities were declared eligible for Federal assistance.

To show the high priority of clean water, Congress raised the Federal share of construction grants to a mandatory 75%.

The Congress authorized $5 billion in contract authority funding for FY 73 construction grants, $6 billion in FY 74, and $7 billion in FY 75.

The EPA will allocate only $2 billion for FY 73 and only $3 billion for FY 74, less than half the funds available.

EPA will obligate approximately $8 billion between FY 72–74 out of $8.9 billion in available budget authority.

To reimburse cities and states that built control facilities without Federal aid, Congress authorized a total of $2.75 billion.

Only $1.9 billion will be obligated for reimbursements, and the Administration has said it will not obligate any additional funds.

To plan for regional management of water pollution control, Congress authorized up to $50 million for planning funds in FY 73, $100 million in FY 74, and $150 million in FY 75.

Only $25 million will be obligated for areawide waste treatment management activities in the FY 74 Budget. (See Table EN I)

SOLID WASTE

Continuing in the directions set in the FY 73 Budget, Federal efforts in solid waste management, recycling, and resource recovery, will be again substantially cut back. The EPA will request only approximately $5 million in FY 74 for solid waste, a budget reduction of over $24 million from FY 73. EPA will propose that the only Federal role on solid waste and resource recovery should be in the collection, handling and disposal of hazardous and toxic materials. All other functions would be passed on to state and local governments.

Grants for planning, demonstrations, and construction will be terminated. Of the $15 million appropriation for the § 208 demonstration and construction grant program, only $9 million was obligated in FY 73, together with an $11.5 million carryover. Therefore, approximately $6 million will not be obligated for solid waste, and will be transferred to other EPA functions.

Research-development (R & D) budget authority will be reduced to $2.2 million down from $17 million in FY 73.

TABLE EN-I.—WASTE TREATMENT WORKS

[In millions]

	Fiscal year 1972		Fiscal year 1973		Fiscal year 1974	
	Budget authority	Obligations	Budget authority	Obligations	Budget authority	Obligations
Construction grants	2,000	787.6	6,900	3,824		3,400
Contract authority (allocated)			[1] 5,000	500	(1)	3,400

[1] The President allocated $2 billion for fiscal year 1973, and $3 billion in fiscal year 1974. The budget reflects the total allocation of $5 billion over the 2-year period fiscal year 1973–74, in fiscal year 1973.

The consequence of the failure to allocate the full funds available—even though actual outlays increase—will be the inability of cities to meet the Federal deadlines and mandates imposed by the Act. It will also mean that fewer cities could receive Federal aid, and that the activities Congress declared eligible for Federal aid will go unfunded.

The alternative will be for cities to continue financing water pollution control programs without Federal assistance. This has been the practice in the past, as cities financed over 70 per cent of the cost of building their waste treatment facilities. Of course, this will require cutbacks in other priority areas at the local level, a difficult choice for any city to make. Either way, the full responsibility—and the burden—will again fall on the nation's cities.

NOISE

Budget authority for EPA's noise programs will increase in FY 74 by $1,621,000, from $2,414,000 to $4,037,000. However, total authorizations under the Noise Control Act of 1972 for FY 74 amount to $8 million. In addition, the total federal noise pollution control and abatement effort will decrease, with the amount obligated in FY 74 ($90 million) less than in FY 73 ($103 million).

The National Aeronautics and Space Administration funds for research and development will continue development of an "environmentally" acceptable supersonic transport for the late 1970's.

LAND USE

The Administration will again propose National Land Use legislation. Twenty million dollars is requested in the FY 74 Budget, the same amount proposed in FY 73. This amount will be substantially less than the Senate accepted in passing a land use bill last year.

The President signed into law the Coastal Zone Management Act of 1972. The National Oceanic and Atmospheric Agency of the Department of Commerce administers their program. This program will not be funded in FY 74, other than the position of associate administrator for the Office of Coastal Zone Management.

PARKS AND RECREATION

Total funds for the Bureau of Outdoor Recreation would be cut by $244.5 million in the FY 74 Budget.

Budget authority for financial aid to state and local governments for city recreation (all federally assisted or direct Federal projects or activities—including historic preservation—which are located within incorporated places of 25,000 or more population) will decrease from $103 million in FY 73 ($30 million less than estimated in the FY 73 Budget) to $11 million in FY 74. However, direct federal activities for city recreation will again increase, from $51 million in FY 73 to $60 million in FY 74.

ENERGY

One of six priority areas for civilian research and development will be provision of "adequate reasonably priced, clean energy." Obligations will increase from $537 million in FY 72, and $624 million in FY 73, to $772 million in FY 74.

Emphasis will be given to solution of short-term problems, particularly finding environmentally-sound utilization of higher sulphur coal. In nuclear power, the liquid metal fast breeder reactor rates top priority.

TABLE EN-II.—EPA MAJOR URBAN ENVIRONMENTAL QUALITY PROGRAMS BY MEDIA

[In thousands]

Media	Fiscal year 1973 budget authority	Fiscal year 1974 budget authority	Change
Air	$152,490	$146,360	−$6,130
Water quality	139,243	[1] 192,356	53,113
Solid waste	30,013	5,760	−24,253
Noise	2,416	4,037	1,621

[1] Includes $25,000,000 of contract authority to be obligated for sec. 208, areawide waste treatment management activities; $50,000,000 was authorized for fiscal year 1973, $100 000,000 for fiscal year 1974. (Source: EPA.)

HEALTH

The 1974 health budget as in other social program areas, proposes both a phase-out of a number of program activities and a reduction in the level of spending of those remaining. While the 1973 budget was characterized as a "maintenance" budget in health, the 1974 budget can only be characterized as a "withdrawal" budget.

Many budget decisions were apparently made on the basis of the significant number of legislative authorizations which expire this year. Among the expiring acts which are proposed *not* to be extended are the "Hill-Burton" Health Facilities construction program, the Community Mental Health Centers Act, Regional Medical Programs, and categorical training programs in allied health, public health and in mental health. Migrant health and the family planning programs of the National Center for Family Planning will be funded under the "Partnership for Health" Act. The remaining health activities of OEO are proposed to be transferred to HEW.

Comprehensive Health Planning, an expiring authority proposed for renewal, will show a slight increase. Legislation fostering the development of Health Maintenance Organizations (HMO's) will be reintroduced.

The Public Health Service Hospitals in nine seacoast cities are again proposed to be transferred to local control, and St. Elizabeth's Hospital, the mental hospital in the District of Columbia is to be transferred to the District Government.

The Center for Disease Control targets venereal disease as the major 1974 effort, but will operate at a 15 percent budget reduction. The environmental programs to eliminate and control lead-based paint poisoning and rat infestation will continue on a maintenance level in 1974, with eventual phase-out proposed.

Biomedical research at the National Institutes of Health will show increases in cancer and heart research, with reductions in other NIH programs.

In summary, the President's Health budget is characterized by the virtual elimination of construction programs and of manpower training (for all but medicine and nursing, which are substantially cut back); and by the presumption that State and local governments will assume a larger part of the funding of delivery programs. The only significant exceptions to this are drug abuse activities and cancer/heart research.

A comparative table of programs of interest follows:

[In millions of dollars]

	1973	1974	Change
Mental health	640	1,320	+680

The $680 million increase includes costs beyond 1974 to support previously approved grants which will ultimately be terminated. It includes: general mental health, $384 million; drug abuse, $205 million; alcoholism, $47 million.

[In millions of dollars]

	1973	1974	Change
Health service planning and development:			
Comprehensive health planning	35	38	+3
Regional medical programs	60	0	−60
Health facilities construction	8	2	−6
Health services delivery:			
Comprehensive health projects	110	211	+101
Migrant health	24	0	−24
Family planning	107	122	+15
Maternal and child health	244	244	0

The "increases" result from the transfer of OEO projects and do not represent new money. No new starts or increases are included. The MCH projects will be converted to State formula grants.

COMMENT

Apparent increases in the HEW health budget are explained by:

(1) Estimating the full-term cost of presently approved projects in programs to be phased out, and

(2) Assumption of OEO health activities.

The most disturbing cuts are the virtual elimination of the health facilities construction program and the elimination of the community mental health centers program. The justification for ending Hill-Burton is the meeting of all needs for hospital beds; there is no recognition of the critical needs for remodeling and reconstructing many urban hospitals, particularly those which serve the poor. The elimination of project grants in alcoholism will seriously impair the efforts of cities in states which have enacted, or are about to enact, the Uniform Alcoholism Act.

Additional cuts are proposed through "rescissions", or reductions of the 1973 budget request or appropriation. Because the HEW appropriation for 1973 was twice vetoed, there is no appropriation from which to "impound" health funds; but a request is being made to reduce health funds $500 million below the President's 1973 budget request. Much of this reduction relates to facilities construction and regional medical programs.

HUD

The Administration's FY 74 Budget for the Department of Housing and Urban Development proposes substantial reductions in new commitments in the nation's housing and community development efforts during the next year.

The President is requesting only $2.7 billion in new appropriations for the Department's programs, down 36% from the current fiscal year's actual level of $4.2 billion. Using another measure, after dipping into unused balances from FY 73, HUD would have only $3.7 billion in funds for new program commitments, down from this year's level of $5 billion.

During FY 73, impounded funds will constitute approximately 16% ($991 million) of the Department's total available budget authority. In FY 74, impoundments will rise to at least 21% ($1 billion plus, depending on Congressional Appropriation Acts) of total HUD funds available for new commitments.

The Budget reflects action already taken by the Administration to freeze all new commitments under the four major HUD-assisted housing programs on January 5, 1973. In addition, the Budget once again restates the President's support for consolidating the Department's seven major community development programs into a single block grant, referred to as Urban Community Development Special Revenue Sharing by the Administration.

In FY 74, all funds available under HUD's Section 701 Comprehensive Planning Program would be channeled to the states, rather than have portions flow directly to cities and to metropolitan councils of governments as is the case now. And, as part of the President's decision to dismantle the Office of Economic Opportunity, OEO's Housing Research activities (totaling $13 million) would be added to HUD's Research and Technology responsibilities on July 1, 1973.

To understand the details of this FY 74 Budget for HUD, it is necessary to break the analysis down into three groups of programs—those being proposed for consolidation into the community development block grant; other community development, planning, and research activities; and housing.

For the third successive year, the proposed budget sets forth the Administration's support for legislation which would consolidate HUD's major community development categorical grant programs into a single Community Development Block Grant (called Urban Community Development Special Revenue Sharing by the President). Last year, the Administration supported the inclusion of five existing programs within the consolidation—urban renewal, Model Cities, open space land, neighborhood facilities, and rehabilitation loans. This year's budget presentation adds two additional programs to that package—basic water and sewer facilities and public facility loans. The Budget also restates the Administration's support for an initial funding level for the new block grant—proposed to begin on July 1, 1974—of $2.3 billion, the same level as was recommended last year. Contrary to earlier reports, the OEO Community Action program has not been proposed for consolidation under the block grant.

Given this programmatic framework, the HUD community development budgets for FY 73 and 74 are designed to provide a transitional bridge for ongoing local programs from January, 1973 to July, 1974, when the block grant is projected to begin. Thus, with most major Model Cities and urban renewal Neighborhood Development Program (NDP) activities up for annual refunding during the third and fourth quarters of the current fiscal year 1973, HUD proposes to fund them in such a way that the local programs will be able to continue operating through June 30, 1974. The Budget document argues that sufficient Model Cities funds already exist and that only $137.5 million additional urban renewal dollars will be necessary to accomplish this objective. The Budget does not contain adequate detail to substantiate this projection.

Other community development programs, which lack the continuing nature of Model Cities or NDP, have already been frozen (open space, basic water and sewer facilities, and public facility loans) or will be frozen on June 30, 1973 (neighborhood facilities and rehabilitation loans). It is significant that the Budget announces the release of $20 million in previously impounded rehabilitation loan funds for use during the balance of FY 73 in connection with urban renewal projects scheduled for close-out in the near future.

As a result of this proposed funding strategy, the Administration's FY 73 impoundment balance for these seven programs alone will be $542 million; a higher figure is expected for FY 74 after the Congressional Appropriation Committees have acted.

TABLE HUD-I.—COMMUNITY DEVELOPMENT PROGRAMS

[Dollars in millions]

Community development programs [1]	Fiscal year 1973 Appropriation (actual)	Fiscal year 1973 Estimated obligations	Fiscal year 1973 Carryover appropriations	Fiscal year 1974 Appropriation (request)	Fiscal year 1974 Estimated obligations	Fiscal year 1974 Carryover appropriations
Urban renewal	1,450	1,450	0	137.5	137.5	0
Model cities	[2] 605	605	0	0	0	0
Water and sewer	[3] 500	[4] 100	400	0	0	400
Open space	100	[4] 50	50	0	0	50
Neighborhood facilities	40	40	0	0	0	0
Rehabilitation loans	[5] 126	70	[6] 72	0	0	[7] 92
Subtotals	2,821	2,315	522	137.5	137.5	542
Public facility loans	NA	[5][8] 20	20	NA	0	

[1] All 6 existing categorical community development programs (plus public facility loans) are proposed to be consolidated into single community development block grant (i.e. special revenue sharing) program to begin July 1, 1974 fiscal year 1975). Total annual program levels for the 7 existing programs equals $2,007,000,000. The block grant is projected to begin at $2,300,000,000.

[2] $105,000,000 in unutilized fiscal year 1972 funds plus $500,000,000 in new fiscal year 1973 appropriations.

[3] $500,000,000 available in carry-over appropriations from fiscal year 1972.

[4] Program administratively frozen, no new commitments after Jan. 5, 1973.

[5] $500,000,000 in carry-over appropriations from fiscal year 1972 plus $70,000,000 in new fiscal year 1973 appropriations plus $6,000,000 in repayments to revolving fund during fiscal year 1972.

[6] Includes $16,000,000 in repayments to revolving fund during fiscal year 1973.

[7] Includes $20,000,000 in repayments to revolving fund during fiscal year 1974.

[8] Includes $16,000,000 in repayments to revolving fund during fiscal year 1974.

OTHER COMMUNITY DEVELOPMENT, PLANNING AND RESEARCH (TABLE HUD-II)

Section 701 Comprehensive Planning—Beginning with FY 74, the Administration proposes to funnel all Section 701 funds to states, "allowing Governors to make suballocations to local governments and other eligible recipients in accordance with state priorities." The national program level would be raised 10% to $110 million, with the additional funds also available to states, particularly for interstate planning activities. Under the present program, 37% of the Section 701 funds go to states (including 15.5% which has passed through to cities under 50,000 population and to counties), 35% go to areawide agencies and 25% go directly to cities over 50,000. It is not now clear whether this abrupt change in program design can be made without statutory change, although the present 701 law does not *require* that HUD must directly fund cities.

New communities.—The Budget proposes to eliminate future grant funds for assistance to the development of new communities, although the guarantee portion of the program would continue with 10 new communities slated for approval during FY 74.

Research and technology.—The Budget recommends that HUD's Research and Technology funding be raised from $53 million in FY 73 to $71.5 million in FY 74. The bulk of this increase is accounted for by the scheduled transfer, on July 1, 1973, of OEO's housing research activities, funded at $13 million. $11.5 million of HUD's R & T budget would be spent on further testing of housing allowances.

TABLE HUD-II.—OTHER COMMUNITY DEVELOPMENT, PLANNING AND RESEARCH PROGRAMS

[In millions of dollars]

Other community development, planning and research programs	Fiscal year 1973 Appropriation (actual)	Fiscal year 1973 Estimated obligations	Fiscal year 1974 Appropriation requested	Fiscal year 1974 Estimated obligations
Sec. 701 comprehensive planning	100.0	100.0	110.0	110.0
New communities	7.5	7.5	0	0
Community development training and urban fellowships	3.5	3.5	0	0
Research and technology	53.0	53.0	[1] 71.5	71.5

[1] Bulk of increase in program level due to proposed transfer of $13 million OEO Housing Research program to HUD on July 1, 1973.

HOUSING (TABLE HUD-III)

The Administration's FY 74 Budget reaffirms the announced January 5, 1973 freeze on all HUD-assisted housing programs and details, for the first time, the size of the impoundments resulting from the freeze. The Budget shows no funds to be available during the next 17 months for new commitments, although the Administration has indicated that some low level of new commitment would be permitted "to meet statutory or other specific program commitments." $70 million would be used to complete public housing loan and grant contracts for new units for which commitments were made during FY 73 or earlier. $280 million would be spent on operating subsidies for existing public housing units. The impoundment arising out of the freeze of the three FHA subsidy programs alone—rent supplements, Section 235 homeownership and Section 236 rental assistance housing—will equal $431 million, an amount that will likely increase in FY 74 as a result of Congressional appropriations.

As might be imagined, the freeze has markedly affected the annual rate of new commitments for HUD-assisted housing. It is projected that commitments made prior to the January 5, 1973 freeze will generate an annualized level of "new starts" of 250,000 units. However, as the following table (HUD-IV) shows, the level of new commitments, as compared with previous years, has declined dramatically, which will result in reductions in the "new start" levels beginning in FY 75.

TABLE HUD-III.—HOUSING

[In millions of dollars]

Housing	Fiscal year 1973 Contract authority available	Fiscal year 1973 Estimated obligations [1]	Fiscal year 1973 Carryover authorizations	Fiscal year 1974 Contract authority requested	Fiscal year 1974 Estimated obligations	Fiscal year 1974 Carryover authorizations
Sec. 235	[2] 253	33	221	0	0	221
Sec. 236	[3] 263	92	171	0	0	171
Rent supplements	[4] 75	37	39	0	0	39
Public housing: [5] Production	103	103	0	70	[6] 70	0
Public housing: [5] Management (operating subsidies and modernization)	370	370	0	280	280	
Subtotal	1,064	635	431	350	350	431

[1] Freeze placed on all new production commitments as of Jan. 5, 1973.

[2] $83,000,000 in unutilized contract authority from fiscal year 1972 plus $170,000,000 in new contract authority for fiscal year 1973.

[3] $88,000,000 in unutilized contract authority from fiscal year 1972 plus $175,000,000 in new contract authority for fiscal year 1973.

[4] $27,000,000 in unutilized contract authority from fiscal year 1972 plus $48,000,000 in new contract authority for fiscal year 1973.

[5] Total contract authority available in fiscal year 1973 equaled $473,000,000, broken down as follows: $78,000,000 in unutilized general contract authority from fiscal year 1972 plus $150,000,000 in newly enacted general contract authority in fiscal year 1973 plus $245,000,000 in annually available contract authority for operating subsidies.

[6] This $70,000,000 in general contract authority was committed during fiscal year 1973 or earlier years and will have loan and grant contracts signed during fiscal year 1974.

TABLE HUD-IV.—ANNUAL NEW COMMITMENT LEVELS

[In thousands of units]

	Fiscal year— 1970	1971	1972	1973
Sec. 235: Homeownership	143	142	152	40
Sec. 236: Rental	132	159	158	100
Rent supplements	40	30	42	29
Public housing	102	89	101	46
Total	417	420	453	215

IMPOUNDMENTS (TABLE HUD-V)

For the third successive year, HUD's budget will be subject to substantial fund holdbacks or impoundments. Since FY 71, when the widespread practice of impounding urban funds began, at least 16% of HUD's available budget authority has been frozen each year. In FY 74, that figure is slated to be at least 21%. The percentage holdback will likely be higher for FY 74 after the Congressional appropriations are passed. If the Administration's current impoundment practice continues, those funds authorized and appropriated by Congress which exceed budget requests would automatically be frozen.

COMMENTS

The President's FY 74 Budget for the Department of Housing and Community Development continues the frustrating trend of the past three fiscal years of holding back the growth in the size of the nation's commitment to solving its housing and community development problems. As the cities enter the new fiscal year on July 1, they will be faced with a nearly complete shutdown of HUD's assisted housing programs and the

phasing out of the various community development programs, such as urban renewal and Model Cities.

TABLE HUD-V.—IMPOUNDMENTS

[Dollar amounts in millons]

Impoundments (unused balances)	Fiscal year— 1971	1972	1973	1974[1]
Urban renewal	$215			
Water and sewer	200	$500	$400	$400
Rehabilitation loan		50	72	92
Open space			50	50
Public facility loan			20	20
Public housing	164	78		
235	[2] 35	83	221	221
236	[2] 30	88	171	171
Rent supplements	[2] 26	27	39	39
Total	670	826	973	993
Total as percent of available budget authority	19	17	16	21

[1] Ultimate fiscal year 1974 impoundment figures subject to action by congressional Appropriations Committees.
[2] Cumulative figure through June 30, 1971.

In the case of community development, however, cities may find hope in the outstanding proposal to create a successor program, Community Development Block Grants (called Special Revenue Sharing by the Administration). The Administration's continued strong support for the proposal is extremely gratifying. It is unfortunate that it was found necessary in the President's Budget to suggest that the reason for moving toward the Community Development Block Grant approach is that the existing programs slated for consolidation—such as urban renewal, Model Cities, open space land, water and sewer, neighborhood facilities, and rehabilitation loans—have failed and must be terminated. Quite the contrary, cities view these present programs as being the life-blood of their efforts to redevelop and revitalize their communities. The block grant, therefore, is seen as an important extension and expansion of these programs in a new form providing greater flexibility and local control. It is on this basis that cities will once again mount a serious campaign designed to persuade the Congress to approve the legislation quickly.

On the question of the transition from where cities are now to FY 75 and the hoped-for beginning of the block grant, the Budget documents lack details. It asserts that sufficient funds are already available, along with an additional $137.5 million for urban renewal, to fund adequately all NDP and Model Cities programs through June 30, 1974. Without more extensive figures, it is difficult to assess this claim, although doubtful that this transition can be accomplished in the projected manner without significant cut-backs in anticipated local program levels.

The President plans to submit legislation similar to his 1971 proposal to create a new planning and management program in place of 701. However, it is unfortunate that at this critical stage in the process of building a capacity in local general purpose governments to administer block grant legislation, the Administration has chosen to redirect the Section 701 Comprehensive Planning Program to total control by states. During the next 18 months, HUD was planning to administer the 701 funding mechanism (particularly as it has lately been used to fund directly cities over 50,000 population) as the appropriate source for supporting local comprehensive planning activities geared to preparing the city for the block grant. If the Administration now directs 100% of the 701 funding to states, most of which have no particular interest or stake in the success of the block grant, few cities can reasonably expect HUD planning assistance related to block grant preparations during FY 74.

In sharp contrast to community development programs, the Budget presents a bleak picture for future Federally-assisted housing activity. The Budget not only confirms the comprehensive nature of the current 18 month freeze on all FHA subsidized and HUD public housing, it also gives no indication that the freeze will be lifted during FY 74 to accommodate the need for Federally-assisted housing funds so that cities may carry forward urban renewal and Model Cities activity HUD already has approved.

The Budget's assertion that no new funds will be available for new housing commitments conflicts with present statutory requirements that local community development plans and projects have housing elements. Therefore, such plans and projects necessarily assume the existence of a relatively steady flow of Federally-assisted housing. As a result, the present freeze will not only severely restrict local community development options, in many cases it will make it impossible for HUD to insist on the closing out of existing urban renewal projects, an expressed goal elsewhere in the Budget.

Intergovernmental Personnel Act

The Intergovernmental Personnel Act of 1970 (IPA) provided grants to improve State and local personnel administration. The program was funded with $12.5 million in FY 72 and $15 million in FY 73. The request for FY 74 is $10 million, a decrease of one-third. The actual operating level under IPA rose from about $3 million in FY 72 to $14 million in FY 73. It is proposed to remain at $14 million for FY 74.

Law Enforcement Assistance Administration

SUMMARY

The requested budget authority for the Law Enforcement Assistance Administration for FY 74 is $891 million. This is basically the same funding level as LEAA had in FY 73.

The LEAA authorization, under the Omnibus Crime Control and Safe Streets Act, expires at the end of FY 73. The Administration is proposing legislation which would convert the current block grant program to a special revenue sharing program for law enforcement.

THE PROPOSED BUDGET

The requested budget authority for LEAA for FY 74 is $891,124,000. This is an increase of only 4% over the FY 73 appropriations of $855,366,000. It represents a continuing decrease in the rate of growth of this program (See Table I). Two-thirds of this increase are for Federal functions, thus making the amount of funds available to state and local governments this year virtually the same as last year.

TABLE LEAA-I.—RATE OF GROWTH OF LEAA APPROPRIATIONS

[Dollar amounts in millions]

Fiscal year	Appropriation	Dollar increase	Percentage increase
1969	$63		
1970	268	205	325
1971	532	264	100
1972	699	167	31
1973	855	156	22
1974	891	36	4

Since the Safe Streets Act expires this June, there is no authorization for FY 74. It should be noted however, that the appropriation for FY 73 and the requested budget authority for FY 74 are each only about one-half the authorization for FY 73 (i.e., $1.750 billion).

The planned distribution of the FY 74 budget authority under the Administration's proposed law enforcement revenue sharing, as compared with the distribution of FY 73 appropriations, is outlined in Table II.

As Table II indicates, special revenue sharing payments of $680 million are proposed to replace the current bloc grants to states and localities for planning, law enforcement, and corrections improvements, as well as two activities—Manpower Development and Technical Assistance—now administered at the Federal level. The LEAA discretionary budget, now $145.2 million (See Table II, Categories 2(b) and 3(b)), would be reduced to $120 million.

COMMENT

The failure to substantially increase the funding level of the LEAA program will seriously impair the ability of localities to continue their efforts to reduce crime and to improve their law enforcement and corrections systems. This is true for two reasons.

First, the budget will limit the funding of new and more effective anti-crime programs at the local level. Since much of the new budget authority will be committed to refunding successful projects undertaken in the previous two years, a less than adequate amount of funding will be available to initiate new projects. The proposed reduction in the LEAA discretionary budget (from $145.5 million in FY 73 to $120 million in FY 74) provides an example here. A large portion of this budget will probably be committed to funding recently initiated anti-crime programs. (The major program here is the Impact Program in eight large cities). At the very time when programs such as Impact are likely to be showing their success and their applicability to other cities, funding for the extension of these programs to other localities will not be available.

Second, the proposed limitation on LEAA funding is particularly unfortunate in its timing. The rate of growth of reported crime in 1972 was 1%, the smallest rate of growth in 12 years. And in the last three years there have been massive increases in local criminal justice expenditures. The upcoming year, then, could well be a critical one in the Federal-state-local effort to combat crime. For the reduction of crime and the improvement of the criminal justice system to become permanent realities, a substantial increase in the level of Federal assistance is necessary.

TABLE LEAA-II.—LEAA BUDGET, FY 73 AND 74

[In millions of dollars]

Categories	Fiscal year— 1973	1974
1. Planning grants to States and localities	50.0	
2. Block action grants to States and localities to improve law enforcement:		
(a) Allocations to States by population	480.3	
(b) Allocations to States or localities by LEAA discretion	88.7	
3. Special grants to States and localities to aid correctional institutions and programs:		
(a) Allocations to States by population	56.5	
(b) Allocations to States or localities by LEAA discretion	56.5	
4. Manpower development (includes LEEP—Law enforcement education program)	45.0	
5. Technical assistance	70.0	
Total	787.0	
6. Financial assistance for law enforcement purposes:		
(a) Special revenue sharing payments to States by population		680.0
(b) Allocations to States or localities by LEAA discretion		120.0
Total		800.0
7. Technology analysis, development and dissemination	31.6	48.5
8. Data systems and statistical assistance	31.2	25.5
9. Management and operations	15.6	17.1
Total	855.4	891.1

MANPOWER

There will be *no* request for extension of the Emergency Employment Act. The $2.25 billion appropriated for the two-year legis-

lative effort will be spent with $580 million of that total to be used for phase out of the program after June 30, 1973. Reasons given for termination include:

1. Unemployment is falling; will continue to fall to an Administration estimate of 4.5 percent by the end of calendar 1973. Need is not as great; emergency nature of problem has subsided.

2. Jobs in the private sector have increased; the economy in general is on upswing.

3. Financial ability of local governments to meet demand for public services has improved—specifically with the introduction of *general* revenue sharing.

There will be *no* request for special manpower revenue sharing legislation. Department of Labor (DOL) will act administratively to achieve the goals of special revenue sharing and as such will request extensions of existing MDTA–EOA legislation, both now scheduled to terminate in June of 1973. The implications of this action are significant to cities as efforts at manpower decentralization are addressed.

There will be *no* request for any summer program money, be it the Neighborhood Youth Corps (NYC), the Recreation Support Program (RSP) or Summer Youth Transportation Program (SYTP). This too must come out of the monies being folded into manpower special revenue sharing. An additional option will be provided that local jurisdictions can use the Emergency Employment Act (EEA) monies for "phase out" of PEP *or* for summer programs. This is not additional money; it is only another permissible way to expend local EEA funds.

The proposed budget authority for manpower revenue-sharing for FY 74 is $1.340 billion. This compares to an FY 72 appropriation of $1.682 billion, or a reduction of 20 percent.

Comparison with FY 73 requires explanation since the Administration is proposing changes in the FY 1973 appropriation levels. The legislative basis for funds included in manpower revenue sharing are the Manpower Development Training Act (MDTA) and the Economic Opportunity Act (EOA). The FY 73 approved appropriation for the EOA is $829.8 million. The FY 73 appropriation accepted by both the Administration and Congress for the MDTA was $719.6 million. (This appropriation was in the vetoed DOL-HEW appropriation bill). Thus the anticipated appropriation for FY 73 was $1.549 billion. The Administration is asking Congress to rescind $283 million of the EOA appropriation. It is also revising its new request for funding under MDTA for this Fiscal Year by reducing the dollar amount by 91 million dollars. The net impact is a reduction in Fiscal Year 1973 figures of $375.3 million or 24 percent less than what was anticipated. The "estimated appropriation" which it is now using for FY 73 is thus $1.174 billion.

Consequently, the budget claims that Fiscal Year 1974 funds for manpower training services are almost $166 million larger than Fiscal Year 1973. In fact, there will have been a 13.5 percent cut in Fiscal Year 1974 from the Fiscal Year 1973 funding which had been anticipated.

The $1.340 billion budget authority for manpower revenue-sharing also includes $40 million transferred from OEO to DOL for Migrant programs, thus revealing an additional $40 million reduction in comparable funding. This means that the "real" reduction from FY 1973 appropriations is over 16 percent.

With the elimination of Emergency Employment Act (EEA) there will be a reduction of 53 percent in funds available for job creation and manpower.

In the budget briefing it was tacitly admitted that in order to rescind the $283 million of the EOA appropriation, the Administration will continue the freeze on new enrollments of manpower training programs thus achieving the reduction even if Congress does not act. In the case of the pending Manpower Development Training Act (MDTA) appropriation—from which $91 million is subtracted, the desired effect will also be accomplished even if Congress does not act by continuing enrollment freezes.

EEA PHASE OUT

In relation to Emergency Employment Act (EEA), the Administration has indicated that it anticipates a phase-out of the program by the end of calendar year 1973 or shortly thereafter. Thus, it will use all of the $2.25 billion authorized, but will extend the period beyond the two years of program operation. Therefore, there is no change in the total numbers of man days of work provided, but merely stretching those man days out over a long period of time.

ADMINISTRATIVE IMPLEMENTATION OF MANPOWER REVENUE SHARING

The manpower revenue sharing budget for FY 1974 ($1,340 billion) will be "controlled" by DOL at two line items:

State and Local Programs

National Programs

Programs to be included among state and local programs will include the following categorical programs: Manpower Development Training Act (MDTA) Institution; CEP; JOPS–NAB; PSC; NYC in-school and summer, and out-of-school; and Operation Mainstream.

National programs will include Job Corps, JOBS, Research and Development efforts and Migrants.

In addition, the responsibility for the activities of many national contracts will be shifted to the local level during the Fiscal Year. Apparently, these monies too must be absorbed from the state and local program allocation over time. Specifically, programs of OIC, Urban League, and SER have been mentioned. The political implications at the local level for this action alone would disrupt an orderly establishment of a local manpower capacity.

PEP and WIN and the Employment Service are, of course, excluded from manpower revenue sharing entirely.

The projected budget for state and local programs for FY 1974 is $950 million. This compares to an anticipated FY 1973 appropriation of approximately $1,050 million or a reduction of 10 percent.

OTHER MANPOWER PROGRAMS

The WIN Program, which is operated through the states, will show an increase in Fiscal Year 1974 to $534.4 million. The Fiscal 1973 original appropriation was $454.5 million from which the Administration is requesting a $161.6 million rescission similar to that discussed above regarding EOA funding. Since WIN is operated through the States, it will mean a situation where local governments have limited control over the expenditure of such funds. Of the FY 1974 proposed budget, $49.1 million is slated for public service employment, $56.2 million for on-the-job training and $151.3 million for institutional and other training services.

Health manpower funds for Fiscal Year 1974 will be reduced by approximately $151.4 million to a level of $382.2 million. This reduction is accomplished by a $93.0 million rescission of Fiscal Year 1973 funds and a subsequent reduction of $58.4 million in Fiscal Year 1974.

Funds for Occupational, Vocational and Adult Education are not included as line items in the Fiscal Year 1974 budget. They have been subsumed in the proposed education revenue sharing. This involves approximately $540 million.

OFFICE OF ECONOMIC OPPORTUNITY

OEO is being dismantled and Federal support for local Community Action operations discontinued.

There is no request for funds for the Office of Economic Opportunity for FY 74. Rather, some segments of the OEO Program are being transferred to other agencies. Community Action operations, which have used the largest portion of the OEO Budget, become a "local option," for which no categorical Federal funds will be available.

Review of the individual OEO program areas shows:

1. Research, development, and evaluation:

Projects and staffs will be transferred to agencies with primary responsibility in the areas of current OEO research efforts.

The FY 74 HEW Budget request includes $23.9 million to continue educational voucher demonstration; $12.6 million to continue experiments in alternative approaches to child care, and $22.7 million to continue policy studies on the causes of poverty.

The 1974 Department of Labor request includes $5.3 million to continue OEO research in the fields of manpower and training.

The 1974 request for the Department of Housing and Urban Development includes $13.4 million to continue efforts to test ways to provide adequate housing for disadvantaged persons. The total request for former OEO research activities is $78 million, up $11.3 million over 1973.

2. Community action operations:

Community Action Programs in the past have consumed the largest portion of the OEO Budget. The 1973 Community Action obligation level was $285 million. There is no Budget request for Community Action Operations in FY 1974. In the words of the Administration:

"Community Action has had an adequate opportunity to demonstrate its value to local communities. Little justification for continuing separate categorical funding can be identified. Evidence is lacking that Community Action Agencies are moving substantial numbers of people out of poverty on a self-sustaining basis. If the constituencies of individual communities desire to continue providing financial support to local Community Action Agencies general and special revenue sharing funds could be used."

HEW will assume responsibility for demonstration programs in Indian self-determination. $32.1 million is requested in the HEW Budget for this program, an increase of $9.7 million over 1973.

3. Health and nutrition:

$147 million for OEO health programs is requested in the HEW appropriation, compared to the 1973 obligation of $165.2 million, a reduction of $18.2 million. When this account is transferred to HEW, there is a further cut of nearly $47 million. The Administration is asking for a "rescission" of $45 million in FY 73 appropriations. The net loss is some $110 million.

4. Community economic development:

The Office of Minority Business Enterprise Budget request includes $39.3 million to fund grantees currently funded through the OEO economic development program. The 1973 obligations for this purpose were $30.7 million. However, it should be noted that the OMBE budget for FY 74 shows only a $10.6 million increase over FY 73. Consequently, in programs designed to support minority business enterprise, there is a net reduction of some $28.7 million in FY 74.

5. Migrant and seasonal farm workers:

$40 million is included in the Department of Labor budget request for programs for migrant workers, including food programs now funded through the emergency food and medical services program. The 1973 obligation level is $36.3 million.

6. Legal services:

The 1974 request of $71.5 million is for appropriation to HEW. The Administration's intention is to seek passage of legislation for a Legal Services Corporation. The 1973 obligation level is $73.8 million.

7. General support:

The Administration asks $33 million for the General Services Administration to phase

out outstanding grants and contracts of discontinued activities.

TABLE OEO-1.—OEO OBLIGATIONS, BY PROGRAM
[In millions of dollars]

Program by activities	1972 actual	1973 estimate	1974 request	Responsible agency, 1974
Research, development, and evaluation	45.0	66.7	78.0	Various agencies.
Community action operations	351.0	285.3	.....	Local option.
Health and nutrition	157.2	165.2	147.0	HEW.
Community economic development	26.8	30.7	39.0	OMBE.
Migrants and seasonal farmworkers	36.5	36.3	40.0	DOL.
Legal services program	67.7	73.8	71.5	Independent corporation.
General support (liquidation)	18.2	18.5	33.0	GSA.
Total obligations, net	702.4	676.5	408.8	
Transfers to other accounts	38.3	.2	.....	
Total	740.7	676.7	.....	

COMMENT

The loss of Community Action categorical monies will affect different cities in various fashions.

The larger cities in the nation have generally been the repositories of the most concentrated social ills. As such, they have led the way in developing consciousness of the urban crisis, and in developing mechanisms for resolving it. They have been constrained, however, by diminishing resources.

Many operational programs will be closed. The out-reach functions which non-profit CAAs have undertaken for cities and the use of community participation components to help decide municipal strategies in conjunction with representatives from the disadvantaged communities will, in all likelihood, disappear.

In smaller and rural communities, capacities for dealing with social and human problems will be especially affected. Many CAA's have served as the social planning mechanisms for local government often on an interjurisdictional basis. Some Community Action Agencies constitute the only body capable and experienced in negotiating in the intergovernmental human resources system, as a social and human resources grantsman. Alternative arrangements for continuing these efforts do not currently exist.

RURAL DEVELOPMENT

The Department of Agriculture Budget, which provides loans and grants for rural development activities, includes severe cutbacks in the Farmers Home Administration housing program (See Tables R–II and R–III), and eliminates the funding for sewerage systems in rural areas. On the plus side, the Budget seeks to implement some features of the Rural Development Act of 1972, including loans for community facilities and industrial loans to small communities.

The rural waste disposal grant program was terminated on January 1, 1973, and on June 30, 1973 the loan program in support of waste disposal systems will be terminated. The Agriculture Department program to provide loans to communities to institute water systems will be continued. Early indications are that the water system loans will be about the same level as the previous water and waste disposal system loan program. This would mean that a larger number of loans for water systems may be available through the Agriculture Department.

With regard to waste disposal systems, however, it appears that smaller communities are getting short-changed. The Administration's Budget presentation indicates smaller communities can expect to obtain grants for sewerage systems from the Water Pollution Control Act funds administered by the Environmental Protection Agency. But EPA is putting emphasis on sewage treatment facilities to control pollution and new sewerage systems are being given the lowest priority. Further, EPA is focusing its primary attention on cities over 10,000 population. Loans for waste disposal systems may be available through the Environmental Financing Authority, also established by the Water Pollution Control Act Amendments of 1972. The status of this new authority could not be learned from the Treasury Department, which is to administer the program.

The Budget proposes $100 million in loan authority to public bodies and non-profit associations in cities up to 10,000 for essential community facilities such as fire halls, and fire fighting equipment, community centers, ambulance services, industrial parks and the like. An additional $200 million in loan authority is requested for rural industrialization assistance loans to public, private or cooperative organizations to improve, develop, or finance business, industry and employment to improve economic and environmental conditions. Cities up to 50,000 are eligible, although preference is to be given for cities under 25,000. In addition, $10 million in grant authority is sought for industrial development uses. These requests are new this year and are part of the Rural Development Act of 1972.

No funds were sought for annual grants to public bodies or planning agencies to prepare comprehensive plans for rural development authorized under the Rural Development Act.

TABLE R–I.—RURAL WATER AND WASTE DISPOSAL GRANTS
[Obligations in millions of dollars]

	Fiscal year—		
	1972	1973	[1] 1974
Planning	2.1	0.6	.....
Development	40.0	29.4	.....

[1] Program terminated Jan. 1, 1973.

TABLE R–II.—RURAL HOUSING FOR DOMESTIC FARM LABOR
[Obligations in millions of dollars]

	Fiscal year—		
	1972	1973	[1] 1974
Rural housing grants	6.7	0.7	.....

[1] No new obligations after Jan. 8, 1973.

TABLE R–III.—RURAL HOUSING LOANS
[Obligations in millions of dollars]

	Fiscal year—		
	1972	1973	[1] 1974
Rural housing site loans	1.0	5.0	5
Farm labor housing loans	2.7	7.5	.....
Rural rental housing loans	40.1	30.0	.....
Low-income building loans	1,061.2	650.0	.....
Moderate-income building loans	500.0	1,084.0	618

[1] No new loan obligation will be incurred under the low-income housing, rural rental housing, and farm labor housing loan programs after Jan. 8, 1973, pending an evaluation of the programs.

TABLE R–IV.—RURAL DEVELOPMENT INSURANCE FUND
[Loan obligations in millions of dollars]

	Fiscal year—		
	1972	1973	1974
Water and waste disposal	300	300	345
Industrial development			200
Community facilities			100

TABLE R–V.—RURAL DEVELOPMENT GRANTS AND TECHNICAL ASSISTANCE
[In millions of dollars]

	Fiscal year—		
	1972	1973	1974
Grants for community facilities			$10
Environmental quality cost-sharing and technical assistance			10

TRANSPORTATION

The President's Budget Message assigns a high priority to urban mass transportation. The Urban Mass Transportation Administration will continue to be funded in FY 74 at basically the same level as that of FY 73, about $1 billion.

Total obligations for highways for FY 74 are estimated at $4.6 billion. Had the highway bill passed the 92nd Congress, highways would have been funded at $6 billion annually. This would have meant an additional impoundment of $1.4 billion in highway funds.

The previous impoundment of highway obligations will lead to an increase in the cash surplus of the Highway Trust Fund of $1.4 billion for FY 74.

The Budget indicates that the Administration will not pursue transportation special revenue sharing, which would have merged the airport, highway, and mass transit programs. Instead, the Administration will seek increased flexibility in the use of Highway Trust Fund money for both highway and mass transit purposes.

URBAN MASS TRANSPORTATION

Capital facilities obligations will be increased slightly from an FY 73 budget level of $864 million to an FY 74 level of $872 million. This is a small increase in view of the more than $4 billion in unfunded applications, of which about $2 billion are available for immediate approval and funding during FY 74. Technical studies will increase from $34 million annually to $38 million annually. This is a significant increase since FY 72.

Research, Development, and Demonstrations (R, D & D) also shows a slight increase of about $7 million from FY 73; however, R, D & D is considerably lower than that projected in the FY 73 Budget, which indicated an FY 73 level of $115 million for R, D & D.

During this Congress, legislation will be transmitted by the Administration proposing to increase total contract authority by $3 billion.

Capital grants in 1974 are expected to assist in the purchase of 5,000 new buses, 215 commuter rail cars and 275 rail rapid cars. This level of equipment replacement and expansion should be measured against the roughly 50,000 buses and 9,000 subway and elevated cars in use today—many of them outdated—and new equipment requirements. Construction and other equipment will amount to about $525 million of the total capital grants.

TABLE T–I.—URBAN MASS TRANSPORTATION, FISCAL YEAR 1972–74

[In millions of dollars]

	Administrative reservations (obligations)		
	Fiscal year 1972	Fiscal year 1973	Fiscal year 1974
Capital facilities	$510	$864	$872
Technical studies	25	34	38
R., D. & D	61	73	80
University research and training	3	3	3
Other	5	7	8
Total[1]	604	980	1,000

[1] Due to rounding, totals may differ slightly.

Source: "Appendix to the Budget for Fiscal Year 1974", p. 727

HIGHWAY PROGRAMS

Urban extensions, the Urban System, and the TOPICS program will be combined into an Urban Transportation Program. The projected increase in urban highway program costs is from a level of $645 million in FY 73 to a level of $800 million in FY 74. This represents a 24 percent increase of $155 million in funding available for urban transportation, as well as increased flexibility in the use of urban highway funds. However, the total available for urban systems remains small, when compared with the continued high commitment ($2.6 billion) to the Interstate System.

It is anticipated that urban areas may use the Urban Transportation Program funds for highways or mass transit. Nevertheless, current estimates indicate a need for a minimum Federal funding level of $1 billion annually for urban streets and highways, and about $1.5 billion per year for mass transit purposes.

Legislation will be proposed by the Administration to provide authority for carrying out the Federal-aid highways program in 1974 and 1975. The Administration, however, will propose that $1 billion be provided for mass transit and that $800 million be provided for urban highways.

TABLE T–II.—FEDERAL-AID HIGHWAYS TRUST FUND, FISCAL YEAR 1972–74

	Fiscal year—		
	1972 (actual)	1973 (estimate)	1974 (estimate)
Interstate system	3,360	2,800	2,600
Urban programs:			
Urban extensions	250	240	----------
Urban system	1	140	----------
Topics	44	265	----------
Urban transportation program	----------	----------	800
Total urban programs	295	645	800

Source: "Appendix to the Budget for Fiscal Year 1974," p. 712.

AIRPORTS

Estimated obligations for FY 73 airport grants for planning and construction match the annual total of $295 million provided by the Airport and Airway Development Act of 1970. Contract authority of $560 million is recommended in 1974 for airport construction grant commitments in 1974 and 1975, which would provide funding for construction grants at a level of $280 million per year for two years, or the same level as that of FY 72 and FY 73. Outlays for airport grants are estimated at $209 million in 1974, about the same as in 1973, and more than double the 1972 level.

The Administration plans to introduce "revised legislative and administrative user/charges to insure that the costs of the aviation system are fairly allocated to the beneficiaries of the system." These charges will be primarily for airport security purposes to pay for anti-hijacking procedures recently announced.

TABLE T–III.—GRANTS-IN-AID FOR AIRPORTS, FISCAL YEAR 1972–74

[In millons of dollars]

	Fiscal year—		
	1972	1973	1974
Grants for planning	9	15	15
Grants for construction	280	280	280
Total	289	295	295

Source: "Appendix to the Budget for Fiscal Year 1974," p. 701.

COMMENT

Both the urban mass transit programs and the airport planning and construction grants will be funded at about the same level as FY 73, with a slight increase of $20 million in mass transit obligations. The level of urban highway programs, however, will be substantially increased from $645 million in FY 73 to $800 million in FY 74. In addition, the Administration intends to propose that these funds be made available for either highway or mass transit purposes. While the Federal funds available for highways, urban mass transit and airports fall far short of estimated needs, cities at least should be able to continue transportation programs at the current level. Further, the proposed increased flexibility in the use of Highway Trust Fund money would allow cities to best determine the allocation of Federal transportation funds.

VETERAN'S OPPORTUNITIES

The GI Bill will put $2.5 billion for education and training into circulation primarily in the nation's cities. This reflects a 25% increase signed into law by the President on October 24, 1972. However, the total number of trainees is expected to decline in FY 74 to 1,866,000 from the 1,920,000 of FY 73. This is a result of the dropping military discharges.

Expenditures for the GI Bill, the main Veterans Administration program, are expected to go from $2.542 billion in FY 73 to $2.470 billion in FY 74.

The Veterans Cost of Instruction provision of the Higher Education Act is a key means of making the GI Bill work better in our cities. No appropriation is requested for that provision for FY 74.

Rather than simply impounding the funds for the Veterans Cost of Instruction provision, the Administration has requested a "recission" of the $25 million appropriation. This money, which Congress directed be spent in time to assist veterans in the second half of the 1972–1973 school year, would support important new initiatives by the education community on behalf of veterans.

COMMENT

Returned servicemen, particularly in the 20–24-year-old low-income groups, both white and minority, have high rates of unemployment and limited opportunities. The cut-backs in the Emergency Employment Act (EEA) program will affect them, since this was the principal government program designed to create jobs for veterans. Veterans received a 40% preference under the program.

WELFARE

For purposes of Budget analysis, "welfare" is taken to include: (1) income programs—public assistance and social security; (2) aid and services for special population groupings—children, youth, aged; (3) social services in general; (4) new initiatives—Allied Services legislation.

Legislation enacted by the 92nd Congress in 1972 will significantly increase cash benefits to those covered by social security. The Social Security Amendments of 1972 (H.R. 1), among other things, federalized the adult public assistance categories—aged, blind, permanently and totally disabled—and established a national minimum standard payment, effective January 1, 1974. These amendments will afford greater income security to millions of needy people. It should be noted, however, that in a number of states, supplementation of Federal benefits will still be necessary to maintain prevailing levels of financial aid.

Aid to Families with Dependent Children (AFDC) will continue as a Federally-aided, state-administered program. "Management reforms and proposed legislation to assure that welfare recipients receive only the benefits to which they are entitled," suggests that this group (approximately one-half of all those receiving public assistance) may be forced to absorb some reduction in real income in FY 74.

Social Services will be sharply cut back in many parts of the country as a consequence of a congressionally imposed 2.5 billion dollar authorization ceiling and an administration target some 20 percent below that figure.

KEY BUDGET ITEMS

In reading the following comparative figures, it should be noted that the President vetoed the FY 73 HEW appropriation bill. HEW programs currently operate under a continuing resolution in effect for the period from July 1, 1972 to February 28, 1973.

GRANTS TO STATES FOR PUBLIC ASSISTANCE (EXCLUDING SOCIAL SERVICES)

[In millions of dollars]

	1972 comparable appropriation	1973 revised estimate	1974 budget request
1. Maintenance assistance	6,143	6,488	[1] 5,371
2. Medical assistance	4,279	4,728	5,261
3. State and local training	35	42	45
4. Child welfare services	46	46	46

[1] This figure does not reflect Federal funding for the adult categories for the 2nd half of fiscal year 1974. Approximately $2,200,000,000 budgeted for this purpose is listed as a line item, "Supplemental Security Income", under the Social Security Administration's portion of the budget.

CHILD DEVELOPMENT

Budget requests for the Office of Child Development (OCD) in HEW all represent minor increases over previous fiscal year levels. The Project Headstart, (transferred from OEO to HEW), funding request ($407.4 million) although 3.6 percent above estimated FY 73 expenditures, is $92.6 million below the authorized level of $500 million. Although the budget request reflects a doubling of funding for research and demonstration grants for OCD, the increase represents transfers from OEO R & D projects.

OFFICE OF CHILD DEVELOPMENT

	1972	1973	1974
Headstart	$368.7	*$393.4	$407.4
Research and development	11.5	12.5	24.6
Program administration	9.6	9.7	11.8
Total	390.7	415.6	443.8

*See footnote on p. 3336.

Child care and other supportive services under the WIN Amendments for purposes of enabling AFDC recipients to register for job training or employment, are to be administered by HEW. FY 73 was the first year of major program activity under these amend-

ments. Again, the Administration has submitted revised FY 73 budget authority for this program.

WIN—Child care and supportive services

1972	$37
1973	*$86.7
1974	$202.4

*Revised FY 73 estimates. The original FY 73 Budget request for Headstart was $386 million; for Child Care and supportive services $233.6 million.

ELDERLY

Indicating that the Administration plans initiatives in decentralization of programs that serve the elderly, the FY 74 Budget requests $95.6 million for initiatives to "help marshal existing and expanded resources more effectively at the local level," as under the expired Older Americans Act. In addition, the Budget requests $100 million to fund the elderly nutrition programs. This amount was authorized in legislation signed in March 1972.

PROGRAMS FOR THE ELDERLY

	1972	1973	1974
Special programs	$44.7	$100.9	$95.6
Nutrition program		100.0	100.0
Total	44.7	200.9	195.6

JUVENILE DELINQUENCY

In 1972, and again in 1973, recommended Budget authority for implementation of the juvenile delinquency act passed in August of 1972 was $10 million. The same amount is again requested for 1974.

ALLIED SERVICES

An "Allied Services Act", which would enable state and local governments to coordinate and consolidate the planning and provision of human services, will be re-introduced in the 93rd Congress. To begin implementation of this legislation in FY 74, the Administration has requested an appropriation of $20 million.

	Social services		
	1972 actual	1973 estimate	1974 estimate
Tota' cost	2,161	3,540	2,667
Federal share	1,589	2,655	2,000

COMMENT

Social security increases and federalization of the adult public assistance categories will have an indirect, and probably negligible, effect on cities. In both instances, funding and administration are strictly Federal. Although some additional dollars will flow into cities, this will be offset, at least in part, by higher social security taxes on both employees and employers. As noted above, in a number of states federalization of the adult categories will *not* per se result in higher benefits for recipients.

In the case of AFDC families, which in many cities constitute a substantial percentage of all residents at or below the poverty level, welfare aid may not even keep pace with increased living costs. In the context of cutbacks in related social service and anti-poverty programs, the problems of AFDC families are likely to become exacerbated and, accordingly, the demand of this group on the resources of local general purpose government, should be expected to increase.

Unlike the purely Federal, or Federal-State programs, social services, in varying degrees, have increasingly become a function of local government. Child care projects, services for the elderly, consumer education, and a host of other activities have been provided to low income target groups in hundreds of cities across the country through the social services provisions of the Social Security Act. In many instances, Model Cities supplemental funds, parlayed with HEW matching dollars, were used to develop local projects in response to locally determined needs and priorities. HEW's projected 2 billion dollar expenditure for social services in FY 74 is 655 million dollars below estimated 1973 outlays and 500 million dollars below the ceiling that Congress set last October. The impact of these cuts will fall on cities unevenly. Cities that have not taken advantage of open-ended funding and cities in states that will not be adversely affected by the ceiling formula, will be no worse off. Others, e.g. Atlanta, New York, Chicago, Portland (Maine) and many more, will be hurt in varying degree.

Over the past few years, the Administration sought to have Congress put a lid on social services spending. When Congress failed to do so in 1970 and 1971, "intensified fiscal management efforts" and "active management controls" were seen as a partial solution to uncontrolled costs. At this writing, stringent new regulations *which were drafted before Congress enacted its $2.5 billion ceiling*, are about to be introduced. These regulations will certainly enable HEW to stay well within its $2 billion budget figure. They will, however, sharply curtail cities' flexibility to provide services to certain designated low income groups, to develop innovative social services projects, and to utilize purchase of service arrangements, which heretofore have afforded both the latitude and resources required to meet locally determined needs and priorities.

Insofar as the thrust toward administrative control of social services spending commenced prior to imposition of the legislative ceiling, such control now seems unwarranted. Moreover, stringent regulations and more narrowly drawn Federal guidelines appear to run counter to overall Administration policy which aims toward decentralization, toward strengthening local government capacity, and toward affording localities greater flexibility to utilize and adapt Federal programs in accordance with local needs.

GLOSSARY

Authorization—Basic substantive legislation which sets up a Federal program or agency. Such legislation sometimes sets limits on the amount that can subsequently be appropriated, but does not usually provide budget authority.

Budget authority (BA)—Authority provided by the Congress—mainly in the form of appropriations—which allows Federal agencies to incur obligations to spend or lend money. While most authority is voted each year, some becomes available automatically under permanent laws—for example, interest on the public debt. Budget authority is composed of:

—New obligational authority (NOA), which is authority to incur obligations for programs in the expenditure account; plus

—Loan authority (LA), which is authority to incur obligations for loans made under programs classified in the loan account.

Budget surplus or deficit—The difference between budget receipts and outlays, representing the expenditures account surplus or deficit plus net lending.

Contract authority—Some budget authority is in the form of "contract authority" which permits obligations, but requires an appropriation or receipts "to liquidate" or pay these obligations.

Federal funds—Funds collected and used by the Federal Government, as owner. The major federally owned fund is the general fund, which is derived from general taxes and borrowing and is used for the general purposes of the Government. Federal funds also include certain earmarked receipts, such as those generated by and used for the operations of Government-owned enterprises.

Fiscal year—Year running from July 1 to June 30 and designated by the calendar year in which it *ends*.

Obligations—Commitments made by Federal agencies to pay out money for products, services, loans, or other purposes—as distinct from the actual payments. Obligations incurred may not be larger than the budget authority.

Outlays—Checks issued, interest accrued on the public debt, or other payments made, net of refunds and reimbursements.

Recission—A request to Congress to cancel budget authority previously granted and remaining available, but still unused.

Trust funds—Funds collected and used by the Federal Government, as trustee, for specified purposes, such as social security and highway construction. Receipts held in trust are not available for the general purposes of the Government. Surplus trust fund receipts are invested in Government securities and earn interest.

CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Is there further morning business? If not, morning business is concluded.

CONFIRMATION BY THE SENATE OF APPOINTMENTS TO OFFICES OF DIRECTOR AND DEPUTY DIRECTOR OF THE OFFICE OF MANAGEMENT AND BUDGET

The ACTING PRESIDENT pro tempore (Mr. HUDDLESTON). Under the previous order, and the hour of 1 p.m. having arrived, the Senate will resume the consideration of S. 518, which the clerk will state.

The legislative clerk read as follows:

S. 518, to provide that appointments to the offices of Director and Deputy Director of the Office of Management and Budget shall be subject to confirmation by the Senate.

The Senate resumed the consideration of the bill.

The PRESIDING OFFICER (Mr. BIDEN). Time for debate will be limited to 1 hour on the bill, with the time to be equally divided and controlled by the Senator from North Carolina (Mr. ERVIN) and the Senator from Pennsylvania (Mr. SCOTT) or whomever he designates. The vote on the bill will occur not later than 2 p.m. today.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be charged equally against both sides.

The PRESIDING OFFICER. Without objection, it is so ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ERVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Mr. President, I understand that the distinguished Senator from Minnesota wishes to speak in behalf of this bill; I am glad to yield to the Senator from Minnesota from the time of those favoring the bill.

Mr. HUMPHREY. Mr. President, I thank the distinguished Senator from

North Carolina not only for yielding to me but also for the leadership he is giving the Senate and, indeed, Congress on the very important matter of the relationship of the executive branch of the Government to Congress in the matter of the impoundment—or should I say the proper use—of public funds.

Today, Mr. President, I would like to give my wholehearted support to the bill that my distinguished colleagues, Senator ERVIN and Senator METCALF, have brought to the floor, requiring Senate confirmation of the Director and Deputy Director of the Office of Management and Budget.

On Friday, Senator ERVIN and others detailed the great powers of the Director of the Office of Management and Budget. Among other evidence, they cited the 67 statutes of the United States Code which, added one atop another, surely all add up to a position in the executive branch second only to the President in terms of power.

The distinguished Senator from Wisconsin (Mr. PROXMIRE) also raised questions regarding the fitness of this particular nominee—Mr. Roy Ash—for office, given evidence of mismanagement of Navy contracts in his previous position as head of Litton Industries.

If these were the only reasons for the proposed legislation, there would be more than ample reason to pass it. But there is yet another more timely set of circumstances which compels us to pass this bill. This has to do with the way in which this particular President views the budget process and with the way he is trying to reorganize the executive branch of the Government. Clearly, in both of these areas, President Nixon is attempting to reduce the power of Congress. Clearly, in both these areas, an increase in the power of the OMB would be the major means of reducing the power of Congress.

The Congress and the people of the United States have just had the President's 1974 budget unveiled to them. This budget is the result of almost a year's secret—and I underscore the word "secret"—planning by the OMB. There is no more secret document in this Government than the President's budget and the President's budget message. I have stated this repeatedly. The secrecy with which this budget process is guarded puts everything else, in terms of classified documents and secrecy within the Government, into insignificant proportions.

I want to say once again, Mr. President, that the budget process of the executive branch of the Government makes a mockery of democracy. The budget process makes no room for citizen participation. The budget process makes no room for congressional participation, until such time as the budget comes before us as a total package, conceived in secrecy and delivered in the middle of the night, in the cloak of darkness.

The budget represents more than one-fourth of the Nation's GNP. It is the government's prime instrument of economic policy and social policy. There is no more clear-cut example of the unilateral assertion of Presidential power in the domestic sphere than this budget.

It follows that the Director and Deputy Director of OMB, especially in the second Nixon administration, are among the handful of the most powerful officials in the executive offices. Yet, they are presently unaccountable to Congress—and, indeed, to the public—and under present law their nomination need not be confirmed.

Unless we require such confirmation, the following practices will continue, and Congress will be able to do absolutely nothing about them.

The Presidential budget process will continue to be a secret, closed one. Neither Congressmen, nor mayors, nor Governors, nor business, nor labor, nor farmers, nor anyone else will be able to find out what the OMB is planning—despite the budget's huge impact on State and local budgets.

Nor will the public or their elected representatives be able to inform OMB's anonymous bureaucrats as to their version of what the Nation's priorities should be.

Nor will Congress be told the complete reasoning behind all proposed cutbacks and changes—for it will continue to be excluded from the dozens of hearings that go on between OMB and the agencies, where the important budget issues are discussed.

Nor will Congress have access to OMB's and agencies' evaluations of programs—not just those which support the executive's point of view, but all evaluations.

Nor will Congress obtain other vital data needed to formulate needed levels of revenues, expenditures, and deficits.

Mr. President, some of the most important tools this Congress needs to reassert its proper role are those locked in the OMB workshop. We need to fashion our own tools, to be sure. We need to improve the structural organization of Congress. But we need, also, to unlock OMB and be privy to the vast resources of the executive in formulating this budget. Senate confirmation of the OMB Director would be the first step in doing this.

I have been talking about the problems of secrecy and unilateral assertion of executive power by the OMB in the past. What we face in the future will make this pale by comparison. I have visited with mayors, county supervisors and commissioners, State legislators, and Governors for years and years about this problem.

Mr. President, the budget of the U.S. Government is so important that every State legislature today is in trouble because of the present budget that is before us. This budget is so important to the long-term economic health of this country that it is too important to be left to civil servants, too important to be left to a Director of the Budget who has no accountability to Congress.

Mr. President, this administration is proposing that a new quartet of supercrats be established as overlords over all domestic budget and policy matters. Each is in charge of a nice, neat area of government: one in charge of human resources, one in charge of natural resources, one for community development, and one for economic affairs.

How reassuringly neat it is. No longer, for example, will the President have to worry about the separate and unique problems of disabled people; of elderly pensioners; of unemployed workers; of rural people and farmers; of struggling students; of welfare recipients; of the mentally ill and retarded; of poor children.

Mr. President, you will not have to look at all these problems any more: you need only look at an abstraction called "human resources," tidily taken care of by a supercrat whom we cannot put our hands on, who can ignore us if he so desires.

How is Congress supposed to determine what assumptions are being made about the needs of these different groups by those in the executive who are supposed to be accountable to these groups? Is is not likely that Assistant Secretaries, not to mention Secretaries—appointed, and not elected—will become complete puppets of the OMB, in testifying before Congress and in making policies—given this new structure of supercrat, Surely Senate confirmation of the OMB Director and Deputy Director is needed, so that we can ascertain what the administration's policies will be in this regard.

How do we know what the Secretary of Labor, for example, or his Assistant Secretary in charge of manpower programs, will feel about the need for assistance to the unemployed of this Nation in the next several years? Will these officials, who are most knowledgeable about this problem, have to yield to Supersecretary Weinberger and merely mouth his policies up here on the Hill?

In the first place, what did he ever get elected to? I had never heard about him until he came to Washington under an appointment. I am sure he is an able man. But I wish he would share some of his wisdom with us instead of keeping it closed and secret.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. HUMPHREY. Mr. President, will the Senator yield to me for 1 additional minute?

Mr. ERVIN. I yield 2 additional minutes to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. HUMPHREY. To continue with the scenario—will the Congress be informed as to tradeoffs that will be made by super-Secretary Weinberger and super-Secretary Butz, between their respective areas of human resources and natural resources—at the directive of the budget czar, Mr. Ash? Will the Congress be told the assumptions behind these tradeoffs? The answer is no—unless the Senate acts now to require confirmation of Mr. Ash and his deputy, Mr. Malek, and require that they address these central issues regarding the balance between executive and legislative power.

Clearly, this administration, more than any other in history, equates budgetmaking with policymaking. It seems clear that the new super Cabinet is designed in good part to allow OMB to exert even more control over the Cabinet than it has in the past.

Mr. President, I end this message this morning by saying I have just come back

from 3 days in my part of the country. The people are angry. They are now fully aware of the fact that as far as this administration is concerned, people are nonentities; they are nothing but ZIP code numbers. The people I talked to want to know when this Government is going to keep its word.

I talked to many people. I talked to as many as 600 farm people at one meeting. They said to me, "Mr. Senator, are you in the Government or aren't you? Is this Government going to keep its word with us on contracts made with us or is the Government going to renege on every commitment and violate every contract?"

I have to look at those dear people and tell them that as of now I do not know what we can do. But one thing we can do is to make sure that the man who is going to be the head of the Office of Management and Budget comes to Congress so we can at least question him, so we can at least look into his fitness to hold office, and look into his mind and find out his intentions. I am so pleased the Senate is at least going to demand confirmation of this appointment.

Mr. PERCY. Mr. President, I yield 10 minutes to the distinguished assistant minority leader.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. GRIFFIN. Mr. President, I wish to restate essentially the position and argument I presented last Friday, and to reinforce that position with some additional authority.

I personally believe that a nomination for the office of OMB Director or Deputy, should be subject to confirmation by the Senate. I think the general purpose and objective of this particular bill is good, and I subscribe to it.

As I indicated on Friday, I would have had no particular objection if Congress had moved in a timely and appropriate way to make the appointment of the incumbent Director of OMB subject to Senate confirmation.

However, as a lawyer who has studied Constitutional law, I find it difficult to overlook the fact that a provision in this bill is inappropriate and I am convinced, unconstitutional. Without attempting to judge the qualifications of the particular individual who happens now to be the incumbent Director of OMB, I must point to what I believe is a fatal defect in the bill before us. I refer to the language on page 2 of the bill which states:

> No individual shall hold either such position 30 days after that date unless he has been so appointed.

Mr. President, as I indicated Friday, I think there was a possible argument available to the Senate prior to the reporting of this measure, that under the Constitution of the United States appointment to the office of Director of OMB was already subject to Senate confirmation. The Constitution states that the President shall nominate and with the advice and consent of the Senate shall appoint—

> All other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law.

I think a good argument was available that the Office of Management and Budget is an office established by law, that the Director is an officer of the United States, and that under the Constitution his nomination is subject to confirmation by the Senate. It is conceivable that the appropriate Senate committee might have served notice on the nominee to appear for a confirmation hearing, and if he had refused to appear, it might have been appropriate to question the validity of any payment of his salary.

But the Senate has not seen fit to take that course. Instead, the Senate, as a matter of practice and by reporting this bill has conceded that such an appointment does not require confirmation.

Having made that concession, and the appointee having taken the oath of office, the Senate is now confronted with a fait accompli—the appointment of a Director of OMB who has taken the oath of office and who has embarked on the discharge of his duties. Now the effect of this particular bill would be to remove him from office.

Mr. METCALF. Mr. President, will the Senator yield?

Mr. GRIFFIN. I am glad to yield, if the Senator from North Carolina will yield to the Senator, but I have such a limited amount of time I would like to make my statement, if I might.

Mr. METCALF. Will the Senator from North Carolina yield to me for a couple of minutes for an inquiry at this time?

Mr. ERVIN. Mr. President, I am delighted to yield to the Senator from Montana for 2 minutes.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. METCALF. Mr. President, as I understand the contention of the Senator from Michigan, Congress can at any time call up the Director of OMB for confirmation. I believe as I read the record that the Senator from Michigan admits the doctrine of laches or estoppel does not run from one Congress to another. So is it the position of the Senator from Michigan that there is no need for this bill, that all we have to do is call up the Director of OMB now that he has been appointed, and the Assistant Director, and say, "Look, you are subject to confirmation."

Mr. GRIFFIN. The Senator from Michigan merely makes the point that the Senate might have taken a different position than the one taken by this bill. We might have contended that this office is one that is already subject to confirmation under the Constitution.

However, the Senate by taking up this bill makes it clear that we are not taking that course. What this bill does, in effect, is to concede that confirmation by the Senate was not necessary. Then the bill goes on to provide that in 30 days the incumbent OMB Director will be out of office unless he is reappointed and reconfirmed.

Let me turn now to some authorities which underscore my concern.

President Cleveland on one occasion observed:

> I believe the power to remove or suspend such officials is vested in the President alone by the Constitution which in express terms provide that "the Executive power shall be vested in a President of the United States of America," and that "he shall take care that the laws be faithfully executed."

President Wilson, in a message withholding his approval of an act which he thought infringed upon the Executive power of removal, said——

The PRESIDING OFFICER. The 2 minutes the Senator from Michigan yielded to the Senator from Montana have expired.

Mr. GRIFFIN. President Wilson said:

> It has, I think, always been the accepted construction of the Constitution that the power to appoint officers of this kind carries with it, as an incident, the power to remove. I am convinced that the Congress is without constitutional power to limit the appointing power and its incident, the power of removal, derived from the Constitution.

President Coolidge on one occasion observed:

> No official recognition can be given to the passage of the Senate resolution relative to their opinion concerning members of the Cabinet or other officers under Executive control.
>
> The dismissal of an officer of the government, such as is involved in this case, other than by impeachment, is exclusively an executive function. I regard this as a vital principle of our government.

Mr. President, American jurisprudence, in that part of its treatise dealing with constitutional law, includes this statement:

> Another fundamental rule is that the legislature may not usurp the constitutional powers of the executive department by interference with the functions conferred on that department by the organic law. In a well considered opinion, the Supreme Court has held that Congress cannot take away from the executive department the power to dismiss a purely executive officer appointed by that department even though the appointment was made by and with the advice and consent of the Senate; nor can it make it a condition of such dismissal that the advice and consent of the Senate be necessary to effect it.

Mr. President, the leading case on this subject is *Myers* v. *United States*, 272 U.S. 52, and although the case does not deal with the precise set of facts we have before us, the Supreme Court, speaking through Chief Justice Taft, did articulate essentially those same principles.

I do not say what else the Congress might have done before the incumbent OMB Director took the oath of office and embarked on the discharge of his duties. But if this bill had been enacted into law before then, I have no doubt that it would have been effective in subjecting the incumbent to the requirement of Senate confirmation. However, the bill was not enacted. The bill itself acknowledges that heretofore the power of appointment with respect to this office was vested in the President alone. The President exercised his appointive power in a timely way. The appointee has taken the oath of office, and he has embarked on its official duties. Now, he is an officer of the United States.

That being the situation, the unmistakable effect of the particular language

in this bill which is directed at the incumbent is to remove him from office.

I suggest and point out that this is a fatal constitutional defect in the bill. The Congress by this provision would be seeking to remove an official—which is not constitutionally the power of Congress except by impeachment. If there are any grounds for impeachment, the Constitution establishes procedures for impeaching an official who is already in office. But Congress cannot remove an official through this device.

I yield to the Senator from Tennessee.

Mr. BAKER. I thank the Senator from Michigan for yielding.

Mr. President, I have expressed from time to time, on the floor of the Senate and in other ways, my concern that the Government has become, in effect, a four department Government instead of three, and that the OMB has now a fixed place in Government that may be beyond the power of the executive departments and in some cases that of the legislative or judicial. I am not sure that is a good situation. In fact, I am fairly sure it is not. But we have a situation here that gives me pause, for legal reasons.

I would support this bill were it not for the provision that deals with the present occupant of the office; were it not for my concern that we are in effect attempting to remove an official from office legally appointed to a statutory position. I believe this proposal has the inevitable effect of an ex post facto law and is thus unconstitutional.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BAKER. Could I have 1 more minute?

Mr. PERCY. I yield 1 minute to the Senator.

Mr. BAKER. I hesitate to inject the proposition of constitutionality in the midst of this debate, so I shall not press that further. If this proposal had been made before the appointment was made and before the official had assumed his burden of responsibility, were it under different circumstances, I would support it, but for those reasons, I shall not support it today. I might add that I consider the separate and open issue of personal qualifications of Mr. Ash irrelevant to this question, which is an abstract legal one, in my mind.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, will the Senator from North Carolina yield me 1 minute?

Mr. ERVIN. Mr. President, I yield 2 minutes to the Senator from Montana.

Mr. METCALF. I thank the Senator from North Carolina for his generosity.

Mr. President, I want to make it clear that, as far as the junior Senator from Montana is concerned, this Congress is not bound by the failure of preceding Congresses or preceding Senates to require confirmation, as suggested by the Senator from Michigan. If confirmation could have been required, laches, estoppel, and all those other procedures do not run from one Congress to another. So perhaps now that the Director of OMB has been appointed, we should insist that the President send his name up here for a confirmation hearing. But, out of consideration and out of courtesy to the executive department, because of the years that this has not taken place and because of the history of this legislation, this proposal was introduced.

It is not directed at the present head of the Office of OMB. My bill required confirmation, and emanating from hearings that were held before the Government Operations Committee in the last session of Congress, was introduced before anybody was nominated. Mr. Ash may come here and will probably be confirmed. I regret very much that the minority suggests that if we require a confirmation hearing, the gentleman nominated by the President might not be able to stand up to a confirmation hearing and that his qualifications, character, and so forth, might not be able to stand up under a confirmation hearing. I do not think that is true. I would wager that if there were a confirmation hearing and we went into his record, qualifications, and ability, he would again be confirmed. The President can send up anybody's name. This is not a removal-from-office proposal.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. METCALF. This is only a decision that we will require ordinary confirmation under ordinary regulations for this important office.

Mr. PERCY. Mr. President, I yield myself 10 minutes.

I think the assistant minority leader has made some very interesting comments. First, I would like to commend him on his understanding and interpretation of the Constitution. I read very carefully the same clause pertaining to the responsibilities of the U.S. Senate for confirming officers of the U.S. Government. It is very clear indeed that only the Congress can delegate authority to the executive branch of the Government for appointing inferior officers.

Mr. President, with respect to men in the Executive Office of the President possessing the awesome power described by the senior Senator from Tennessee, I would defy anyone to say that the Director and the Assistant Director of OMB are inferior officers. They possess power that some agency heads and Cabinet officials deeply wish they had. Cabinet officials operate under the edict of the Office of Management and Budget; they are told by OMB what their budget levels will be, and much more.

So, for us to say that because they are in the Office of the President and there is a confidentiality of relationship with the President on some matters—certainly between the President and that Office—we should not confirm them, I think would be a great abdication of our responsibility.

I have maintained that this Office and five other offices that I enumerated and listed publicly at the opening of our session should be subject to confirmation.

The question has been raised as to the 30 days. I would like to explain that I would have actually preferred that all incumbents not be required to be confirmed. That would take this issue out of the realm of personalities and establish the principle that all new appointments should be subject to confirmation.

I believe that that would have probably been preferable. That is what I have provided for in S. 590, my bill, with the principal cosponsorship of the distinguished senior Senator from North Carolina and seven of the members of the Government Operations Committee. S. 518 is not my bill, but in principal I agree that this Office should be subject to confirmation.

I think that is the overriding responsibility we have. And I was reassured when I talked to the incumbent and he said that he welcomed the opportunity to come up and explain his position, his background, and whatever else might be desired. For that reason, I decided that I could certainly in good conscience cosponsor this measure. The 30-day grace period was provided so that we would not have a vacancy in this key OMB position and so that the present incumbent could occupy that position for 30 days during confirmation proceedings. Inasmuch as the Government Operations Committee will have responsibility for confirmation hearings for these particular offices—and I have been assured by our distinguished chairman that that is so—as the ranking minority member, I can say that there will be an opportunity to schedule full hearings soon. I see no reason why we could not report this nomination to the Senate with dispatch, so that the 30 days' time will be adequate providing that no dilatory tactics or undue delays are occasioned, and I would not anticipate that would be so.

Mr. President, an essential reason for my support of S. 518, is that the OMB has developed over the years into one of the most important agencies of the Government. When created in 1921, it could be argued that the Director held a job "personal to the President," performing a function—preparation of the budget—which was essentially a presidential one.

This case certainly cannot be argued convincingly today. The OMB Director now implements authorities Congress has given him in 15 laws and two reorganization plans. These delegations of congressional power to the executive branch should now be accompanied by a requirement that the officials charged with implementing those authorities be scrutinized and confirmed by the elected representatives of the people.

The OMB supervises and controls the preparation, presentation and administration of the budget, evaluates departmental programs, develops budget, management and accounting practices, approves the legislative requests of the departments and agencies, acts as fiscal manager with the ability to withhold or impound funds, supervises the statistical activities of all the departments and agencies, and performs a host of other important functions.

This is not a criticism of the role of the Office of Management and Budget. I believe that big Government demands strong leadership and that a very strong coordinating agent is absolutely necessary. I am simply of the view that the managers of this very mighty enterprise be subject to the judgment of the Senate

in order to assure their qualifications for the jobs they hold, and to secure their accountability to the legislative branch.

I am pleased that the administration has freely permitted the Director and top officials of the OMB to testify to congressional committees. Secretary Shultz, when OMB Director, set an admirable precedent. And there is no question that Mr. Ash is willing to testify, as he did last Friday before the joint Ad Hoc Subcommittee on Impoundment of the Judiciary and Government Operations Committees.

In requiring confirmation of these top OMB officials, and the other three key officials in the Executive Office of the President, as Senator ERVIN and seven other members of the Government Operations Committee and I have proposed in S. 590, I think we should be particularly sensitive to the demands we make on their valuable time. Our committees and subcommittees should not call these, and other high officials, without having compelling purposes. These are not private citizens or lobbyists whose central purpose may be the presentation of points of view to the Congress. These are men charged with overwhelming responsibilities for the conduct of the Nation's business, and we must avoid imposing on them unnecessary additional burdens.

Mr. President, I have seen top Government officials of both the Johnson administration and the Nixon administration called before congressional committees and made many times to wait while some lobbyist—and I use that term in its best sense—who is presenting a private point of view and protecting private interests, takes the time of the committee. These are men who, when they are through, will go back and sit down in the hearing room for the remainder of the day while top officials of the Government are asked to wait for hours. I have seen key administration witnesses called up before congressional committees for a given hour but then forced to sit in a hearing room for hours before testifying, or even asked to come back the next day.

That is a squandering, a waste of talent and does little to strengthen congressional executive branch relations. We should be exceedingly considerate when calling before our committees these exceptionally busy men. We want to preserve their time.

Mr. President, I believe that the requirement for confirmation of these two OMB officials is absolutely necessary, indeed it is overdue. I also believe we should soon enact a requirement that the three remaining major posts in the executive office of the President be subject to confirmation. The Senate has already done so in the case of the Director of the Cost of Living Council, and in this case with administration support.

Mr. President, I was pleased when we had a leadership meeting with the President and I mentioned what I considered to be an untenable condition which existed when we did not confirm a man who had wages and prices and business relations under his command. The President very quickly concurred that that job—Director of the Cost of Living Council—ought to be subject to confirmation, as well as three others. These are the Executive Secretary of the National Security Council, the Executive Director of the Domestic Council, and the Executive Director of the Council on International Economic Policy. Requiring confirmation of all five of these important posts will hopefully help resolve one of the main aspects of the current controversy about the separation of powers by establishing definitively their accountability to Congress.

Finally, Mr. President, I wish to comment on the very interesting and innovative amendment offered by the Senator from West Virginia (ROBERT C. BYRD), which requires reconfirmation of the incumbent Director and Deputy Director of the Office of Management and Budget at the outset of each new presidential term. I understand the reason for the amendment and I essentially support the concept of accountability expressed by the amendment, but I hope we all recognize that we are breaking entirely new ground.

I am concerned, however, that we are perhaps improperly singling out these OMB officials for reconfirmation. I wonder whether it would not have been wiser to think through carefully the need for this new procedure, then clearly define the posts to which it should apply. The Senate confirmed over 13,000 civilian appointments in the 92d Congress. It would be placing a very onerous new burden on ourselves to have to reconfirm even a rather small percentage of them.

I understand that the Senator from West Virginia is planning to introduce a measure that will apply the reconfirmation requirement to Cabinet officers, and that he has introduced a bill to require reconfirmation of the Director of the Federal Bureau of Investigation. I suggest—I hope with the agreement of our distinguished chairman, the senior Senator from North Carolina—that our Government Operations Committee hold hearings on this subject in order to resolve the questions it raises, and recommend appropriate legislation to the Senate. One of these questions is whether we should extend a reconfirmation requirement to other officers of the Executive Office of the President, such as the Director of the Central Intelligence Agency, or the members of the Council of Economic Advisers. In this context I will want to consider whether to amend S. 590, a bill Senator ERVIN and I introduced to require confirmation of the next appointees to the posts of Executive Secretary of the National Security Council, the Executive Director of the Domestic Council, and the Executive Director of the Council on International Economic Policy, to require reconfirmation of these officials.

Perhaps hearings on this subject would be helpful. The findings were that we should have a cutoff point, because we certainly would not want to subject all civilian appointees to reconfirmation proceedings; but there may be a certain number of them that should require this type of procedure.

The PRESIDING OFFICER. Who yields time?

Mr. ERVIN. Mr. President, I yield 4 minutes to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, the Bureau of the Budget was established in 1921. The reason the Director of the Bureau was not made subject to confirmation by the Senate was that the Bureau at that time was made a part of the Treasury Department. The Secretary of the Treasury, of course, was subject to confirmation.

Then in 1939 the Bureau was moved to the White House. But the fundamental change came on July 1, 1970. On that date the name was changed from the Bureau of the Budget to the Office of Management and Budget.

Its functions were expanded, and its power was immensely increased, until now if any official of the Government should be subject to confirmation, certainly the Director and Deputy Director of the Office of Management and Budget should be subject to confirmation by the Senate.

I do not want to overstate the case. But I am inclined to the view that under the situation existing today, the Director of the Office of Management and Budget probably has more power than any Cabinet official. As I say, I do not want to overstate the case; there may be one or two Cabinet officers with greater power, but as a general proposition, he has far more power than most of the Cabinet officials, and as a result I think his appointment certainly should be subject to confirmation by the Senate.

It has become standard operating procedure in the Government now, when committees of Congress communicate with departments of Government, that in their replies, as a last paragraph, they insert words along this line—and I have here a letter written by the Deputy Attorney General to the Committee on the Judiciary, dealing with a subject that has nothing to do with the spending of money, legislation that does not cost the Government one dime but he concludes with this paragraph:

> The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the administration's program.

On the desk of every Senator today is the committee report on the airport bill, the Airport Development Acceleration Act of 1973. The last paragraph in that report contains this statement by the Acting Secretary of the Department of Transportation:

> The Office of Management and Budget has advised that enactment of this legislation would not be in accord with the program of the President.

The point I am suggesting, Mr. President, is that this new office, created on July 1, 1970, less than 3 years ago, has become perhaps the most powerful office in the Government today. It determines the administration's position on much if not most legislation. If that is the case, and I believe it to be the case, most certainly it seems to me that nominations for Director and Deputy Director of that office should be subject to confirmation by the Senate.

Mr. SYMINGTON. Mr. President, will the Senator yield?

Mr. HARRY F. BYRD, JR. I yield to the Senator from Missouri.

Mr. SYMINGTON. Mr. President, based on my experience in the executive branch and my years in this body, I would like to support without reservation the powerful argument that has been made by the Senator from Virginia.

Mr. HARRY F. BYRD, JR. I thank the Senator from Missouri.

The PRESIDING OFFICER. The time of the Senator from Virginia has expired.

Mr. ERVIN. Mr. President, I yield myself such remaining time as I have, or so much thereof as I may use.

My good friend the Senator from Michigan has brought out an argument to the effect that the Constitution requires that appointment of the Director and Deputy Director of Office of Management and Budget be confirmed by the Senate, and that for that reason the appropriate Senate committee could call those two gentlemen before it for confirmation without enacting the pending bill.

Under this bill, they could also be called before the appropriate Senate committee for confirmation. We do not think that committee should be compelled to choose between the Constitution and the statute. We think they ought to take no chances. In other words, I think the appropriate committee ought to be permitted to do like the man who received a telegram from an undertaker saying, "Your mother-in-law died today; shall we cremate or bury?"

He wired back saying, "Take no chances, cremate and bury."

I believe we ought to fix this so that either under the Constitution or under the statute, the jurisdiction of the appropriate committee to conduct a confirmation hearing will be beyond any question. We want to take no chances; we want to cremate and bury that question.

I ask unanimous consent to have printed in the RECORD at this point an editorial entitled "Acknowledging the Status of OMB," which appeared in this morning's issue of the Washington Post.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Feb. 5, 1973]

ACKNOWLEDGING THE STATUS OF OMB

"It is simply ironic to require Senate confirmation of the appointment of a second lieutenant in the Army and deny the Senate the power and the duty to pass on the fitness of individuals to serve as Director or Deputy Director of the Office of Management and Budget, individuals whose powers are second only to those of the President of the United States."

The observation was made by Senator Sam Ervin of North Carolina apropos of some legislation the Senate is scheduled to vote on today. The legislation, introduced by Mr. Ervin and a host of co-sponsors and somewhat amended late last week, would have the effect of making the two top jobs in the Office of Management and Budget subject to Senate confirmation. Its reach is also calculated to include Mr. Nixon's two recent appointees to those jobs, Roy Ash, who has been named Director of OMB, and Frederick Malek, who has been named his deputy. Both men, under the provisions of the bill, would need Senate confirmation to hold office.

Especially where Mr. Ash is concerned, it seems to us important to distinguish between two related but separate issues that have been raised in connection with Senator Ervin's bill. The fitness of Roy Ash for the job is one, and the relationship to Congress of the man who holds that job—whoever he might be—is the other. And although it seems apparent that questions concerning potential conflicts of interest on Mr. Ash's part have fueled the congressional drive to make this job subject to Senate confirmation, the legislation itself does not dispose of Mr. Ash's fate one way or the other. It merely addresses the question of whether the two top officers of OMB, including those who have just been appointed for a presumably long term of office, should be required to gain the same kind of Senate approval as Cabinet officers and other government officials. We think the answer to that is yes.

The positions that are at issue, like the OMB itself, have been altered dramatically in nature over the years. Half a century ago at its inception, the Budget Bureau amounted to little more than a small advisory group within the executive branch. Today, thanks to innumerable statutes and executive orders and rearrangements that have intervened, we are talking about something quite different. We are talking about an administrative and managerial agency of some 700 persons, an agency which makes and carries out policy affecting all the other departments of government. It is, as proponents of Senator Ervin's legislation have observed, more than slightly ironic that the top officers of this all-important decision-making-and-enforcing agency should retain "advisory" group immunity from Senate confirmation proceedings, while the relevant officials of other executive branch offices much more advisory in nature require confirmation. For instance, the Council of Economic Advisers, the Council on Environmental Quality and the Office of Telecommunications Policy all are subject to confirmation of key officials.

There appears to be widespread support in both bodies of Congress and among legislators of both parties for the principle the Ervin bill asserts, even though some have questioned the actual formulation of the bill itself. So the odds seem to be that it will be passed by the Senate and also by the House. Evidently too, Mr. Nixon's spokesmen have put it out that the President intends to veto the legislation if it passes on the grounds that it would inhibit the President's choice of advisers and also establish retroactive conditions on the ability of men he has put in office to serve. In our view the desirability of making Senate confirmation a condition of these most unadvisory of positions seems abundantly clear. And at a time when Congress and the administration seem destined for a pitched battle over the actions of the OMB, it would seem to us to be in the administration's interest that the top OMB directors be people of whom the Senate had formally approved. The dispute over Mr. Ash's qualifications and connections is bound to continue in some congressional setting until it is resolved. We can think of no more appropriate and ultimately reassuring setting for its resolution than Senate confirmation proceedings.

Mr. ERVIN. I ask unanimous consent that the name of the distinguished Senator from Illinois (Mr. STEVENSON) be added as a cosponsor of this bill, as amended.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ERVIN. Does anyone else want whatever time I have left?

Mr. PERCY. Yes. The distinguished Senator from Michigan has asked for 1 minute.

Mr. ERVIN. Before I yield to him, I would like to say that we are not removing anyone from office by this bill. The occupants of these offices have no specific terms of office now, none whatever. We will be assisting them by giving them a definite term of office for approximately 30 days, and giving them almost a 4-year additional term of office after their nominations are confirmed by the Senate.

Mr. PERCY. And I might say it is no surprise to the administration that this discussion is taking place. They have been on notice for a full month that this bill was pending and would be taken up, and that the chances are it will carry overwhelmingly.

Mr. ERVIN. I yield whatever time I have left to the Senator from Michigan.

Mr. GRIFFIN. I thank the Senator. Since we are quoting the Constitution, let me quote these words:

> But the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone,

The question, in this situation, is whether we have vested that appointive power in the President alone. The Senate has taken the position that we did. The Senate has conceded, in effect, through its practice over the years—and by reporting a bill like this, that the appointing power with respect to this office was vested in the President alone.

The President has exercised his power, the appointee has taken the oath of office, he has embarked upon the discharge of his duties, and the effect now of this bill would be to remove him from office in 30 days. That is a power Congress does not have.

Mr. ERVIN. Let me ask the Senator a question: If these are not inferior officers, then any law now in existence which forgoes their confirmation is unconstitutional, is it not?

The PRESIDING OFFICER. The time of the Senator from Michigan has expired. The Senator from Illinois has 1 minute remaining.

Mr. PERCY. Mr. President, I think the distinguished Senator has put his finger on the crux of the problem. If this were an inferior office, we would not be so deeply concerned. But obviously by precedent, and by power given through statutes and reorganization plans, this office has now attained a position so powerful that a very weak argument indeed can be made that it should not be subject to confirmation. In fact, the distinguished Senator from Michigan has been most fair in interpreting the Constitution in accordance with the principles underlying the bill. The only way the office could be exempted by us would be to call it an inferior office and not one person has testified to that fact.

Mr. MUSKIE. Mr. President, I rise in support of S. 518, a bill to provide for Senate confirmation of the Director and Deputy Director of the Office of Management and Budget. I commend the distinguished Senator from North Carolina for his leadership in bringing this measure to the floor.

Over the past decade, the power of the

Office of Management and Budget as a policymaking agency has greatly increased. In the past 4 years, the OMB has emerged as a force, second only to the President, in determining domestic priorities within the executive branch of our Government.

It makes a mockery of the senatorial power of confirmation when the Senate has the responsibility to confirm relatively minor officials like Assistant Directors of the Office of Emergency Planning and the Office of Economic Opportunity, but cannot confirm a powerful policymaker like the Director of the Office of Management and Budget.

When the Bureau of the Budget was created in 1921, it was little more than a small advisory group within the executive branch. But in the past half century innumerable statutes and Executive orders have changed its status. Who among us can believe that this 700-person agency is nothing more than a part of the President's intimate personal staff.

Today the power of the Office of Management and Budget pervades the entire executive branch of the Government. It tells Cabinet officials, confirmed by the Senate, just what money for what programs they can request from the Congress. And, when it does not like the decisions the Congress makes in appropriating funds, it simply ignores them and illegally impounds appropriated funds.

It is disconcerting that the Office of Management and Budget which wields so much power within the executive branch of Government all too often offers little more than lipservice to cooperation. Last week, for example, OMB Director Roy Ash testified before a special Ad Hoc Subcommittee on Impoundment and promised his cooperation with the Congress during the appropriations process.

However, when I asked Mr. Ash if his pledge for cooperation included his support for legislation I have introduced to require each Federal agency to submit its own budgetary proposals to Congress at the same time those budgetary proposals are submitted to the Office of Management and Budget, he said it did not.

My bill, S. 676, would not interfere with the operations of the Office of Management and Budget. It would simply allow the Congress to have the same information available to it during the appropriations process which the Office of Management and Budget has before it. It would give us the same opportunity to set priorities on the basis of the same information that the OMB now has. I can only interpret Mr. Ash's failure to endorse the thrust of my legislation as another indication that he and other top policymakers in the administration are willing to mouth words of cooperation with the Congress, but are not willing to follow up their words with real cooperation.

The legislation we are considering today, S. 518, of which I am a cosponsor, is an important step toward making the Director of the powerful Office of Management and Budget more responsive to the Congress. I urge its enactment.

Mr. President, I ask unanimous consent that the following editorial from this morning's Washington Post be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ACKNOWLEDGING THE STATUS OF OMB

"It is simply ironic to require Senate confirmation of the appointment of a second lieutenant in the Army and deny the Senate the power and the duty to pass on the fitness of individuals to serve as Director or Deputy Director of the Office of Management and Budget, individuals whose powers are second only to those of the President of the United States."

The observation was made by Senator Sam Ervin of North Carolina apropos of some legislation the Senate is scheduled to vote on today. The legislation, introduced by Mr. Ervin and a host of cosponsors and somewhat amended late last week, would have the effect of making the two top jobs in the Office of Management and Budget subject to Senate confirmation. Its reach is also calculated to include Mr. Nixon's top recent appointees to those jobs, Roy Ash, who has been named Director of OMB, and Frederick Malek, who has been named his deputy. Both men, under the provisions of the bill, would need Senate confirmation to hold office.

Especially where Mr. Ash is concerned, it seems to us important to distinguish between two related but separate issues that have been raised in connection with Senator Ervin's bill. The fitness of Roy Ash for the job is one, and the relationship to Congress of the man who, holds that job—whoever he might be—is the other. And although it seems apparent that questions concerning potential conflicts of interest on Mr. Ash's part have fueled the congressional drive to make this job subject to Senate confirmation, the legislation itself does not dispose of Mr. Ash's fate one way or the other. It merely addresses the question of whether the two top officers of OMB, including those who have just been appointed for a presumably long term of office, should be required to gain the same kind of Senate approval as Cabinet officers and other government officials. We think the answer to that is yes.

The positions that are at issue, like the OMB itself, have been altered dramatically in nature over the years. Half a century ago at its inception, the Budget Bureau amounted to little more than a small advisory group within the executive branch. Today, thanks to innumerable statutes and executive orders and rearrangements that have intervened, we are talking about something quite different. We are talking about an administrative and managerial agency of some 700 persons, an agency which makes and carries out policy affecting all the other departments of government. It is, as proponents of Senator Ervin's legislation have observed, more than slightly ironic that the top officers of this all important decision-making-and-enforcing agency should retain "advisory" group immunity from Senate confirmation proceedings, while the relevant officials of other executive branch offices much more advisory in nature require confirmation. For instance, the Council of Economic Advisers, the Council on Environmental Quality and the Office of Telecommunications Policy all are subject to confirmation of key officials.

There appears to be widespread support in both bodies of Congress and among legislators of both parties for the principle the Ervin bill asserts, even though some have questioned the actual formulation of the bill itself. So the odds seem to be that it will be passed by the Senate and also by the House. Evidently too, Mr. Nixon's spokesmen have put it out that the President intends to veto the legislation if it passes on the grounds that it would inhibit the President's choice of advisers and also establish retroactive conditions on the ability of men he has put in office to serve. In our view the desirability of making Senate confirmation a condition of these most unadvisory of positions seems abundantly clear. And at a time when Congress and the administration seem destined for a pitched battle over the actions of the OMB, it would seem to us to be in the administration's interest that the top OMB directors be people of whom the Senate had formally approved. The dispute over Mr. Ash's qualifications and connections is bound to continue in some congressional setting until it is resolved. We can think of no more appropriate and ultimately reassuring setting for its resolution than Senate confirmation proceedings.

Mr. McGOVERN. Mr. President, all of us have become painfully familiar with the history of the Office of Management and Budget and how various Presidents, particularly the incumbent, have used that office to encroach upon the constitutional prerogatives and responsibilities of Congress. I hope we will begin to reverse that trend by enacting the measure now before us, requiring Senate confirmation of the Director and Deputy Director of the Office of Management and Budget.

My own State, South Dakota, has recently felt the cut of the Budget Director's knife in programs which had worked well for our farmers, our flood victims, our children, and other citizens too numerous to enumerate here.

I am going home again in a few days' time and will be called to account by my fellow citizens as their elected representative for the massive cuts in farm programs such as REA, REAP and farmers home loans, in education and housing programs to list but a few.

What am I to say—that an anonymous executive above confirmation by this body and beyond the reach of congressional inquiry has decided that the country does not need programs which have helped our State struggle ahead since the ravages of the Dust Bowl days 40 years ago?

South Dakotans are proud of this country's history and its Constitution, Mr. President. What shall I say when they remind me that the Constitution makes it the responsibility of Congress, not of OMB, to determine what programs the President shall administer, and the funding for each?

The answer to those questions lies in the 50 years of history since the enactment of the Budget and Accounting Act of 1921, during a more tranquil era, when the press, the public and the President had greater respect for Congress.

The legislative history of that act makes clear that the function of the Bureau of the Budget, as OMB was then called, was to develop a consolidated statement of the revenue and expenditure needs of the Government so that we, the Congress, could more intelligently establish priorities in determining which programs to adopt and the level at which they should be funded.

In the intervening half century, the Federal budget has grown from $4 billion to nearly $270 billion; the staff of OMB has grown from some 2 dozen to approximately 700, and the Director of OMB is now assigned by the President

the role the Founding Fathers originally bequeathed to the Congress.

We have aided and abetted the President in usurping our powers by enacting the Budgeting and Accounting Act of 1950, amended in 1956, the Anti-Deficiency Act of 1950, and the Intergovernmental Cooperation Act of 1968.

The first gave the Budget Director control over agency accounting and budget systems, including the preparation of cost-based budgets.

The second offered Presidents a rationale—misplaced in my view—for impounding funds on grounds of effecting savings or "other developments" arising subsequent to the date on which Congress appropriated funds.

Under the third, the President has delegated to the Budget Director certain rulemaking authority with respect to grant-in-aid funds and the power to review certain Federal programs.

Those acts of Congress laid the predicate for Mr. Nixon to issue his now famous Executive Order No. 11541, which in my judgment effectively gave OMB the powers historically reserved to us.

Let us examine the powers of the Director of OMB.

He is the individual to whom Cabinet officers must now go, budget in hand, to obtain approval for programs and funds. They used to come to us for those purposes—now they are reluctant even to testify before our committees.

He is the individual who selectively repeals acts of Congress through the impoundment process. The laws we pass thus merely become options for the President to accept or reject, even when we override his veto.

Mr. Ehrlichman is reported to have stated over the weekend that the President will continue to do this whenever he feels we are behaving "irresponsibly."

The OMB Director is the individual who prepares the budget, that bulky document which defies analysis.

He will feed us dribbles of information over a period of months which we need now if we are to fulfill our budgetary responsibility—such as what weapons systems are recommended and what revenue sharing actually means.

This lack of present specificity will enable anonymous "administration sources" to castigate congressional critics who dare raise their voices in the months ahead by referring to now-secret studies and as yet unpublished figures.

And how are we to respond, Mr. President? With our small staffs and nonexistent computers? Let us all hope that the majority's policy committee adopts tomorrow the majority leader's suggestion that we provide ourselves with the resources to compete successfully with OMB's accountants.

Mr. President, the appointment of Mr. Ash to be the OMB Director itself raises a further compelling reason for the passage of S. 518.

Serious questions have been recently raised in the press as to Mr. Ash's competency to hold that office and indeed, even as to his integrity.

The charges of incompetence stem from Mr. Ash's allegedly bumbling performance as president of Litton Industries which last year grossed over $2.5 billion, but showed net earnings of under $1 million. Admiral Hyman Rickover is reported to have recommended that Ash's company be investigated to determine whether there has been a violation of law through "misrepresentation, if not fraud" in attempts to recover for cost overruns in Navy contracts.

Such charges are not new to Mr. Ash, who is reported by the Washington Post to have been involved in a scheme to defraud the Air Force of millions of dollars when he was with Hughes Aircraft during the 1950's and possibly to have signed false affidavits in connection with a law suit.

I find it personally incredible that the President should on the one hand criticize the Congress as being irresponsible and on the other, appoint a man to fulfill our constitutional functions who has proven to be at best an inept administrator and whose integrity is at least open to serious question.

I ask unanimous consent that two articles concerning Mr. Ash, entitled "A Fox in the Chicken Coop?" in New Republic, volume 168, No. 3, issue 3028, January 20, 1973, and "50's Suit Linked Ash to False Affidavits" in Washington Post, Tuesday, January 2, 1973, page 1, be printed at this point in the RECORD.

There being no objection, the articles were order to be printed in the RECORD, as follows:

[From the New Republic, Jan. 20, 1973]

A FOX IN THE CHICKEN COOP?

We noted last week that Litton Industries, the company Roy L. Ash helped found and build, is a slumping corporate giant whose financial survival and recovery depend in good part not only on billions of dollars in claims and contracts in the hands of the US Navy, but on dozens of other federal government contracts and programs that can be either controlled or influenced by the President's Office of Management and Budget. The appointment of Ash to be Mr. Nixon's OMB director is therefore uniquely indicative of the administration's insensitivity to conflicts of interest. Unlike most top federal officials, Ash will not be confirmed by the Senate and thereafter summonable for congressional questioning. He will preside over budget decisions in secret, and as a presidential adviser be responsible only to Mr. Nixon. Mr. Ash has already let it be known that he will take part in navy budget matters.

Mr. Ash resigned the presidency of Litton on December 9. On the same day, he appeared at the company's annual meeting and talked of how, "we [at Litton] are back near plan," and how "in the aggregate, and over a reasonable time, we believe the results from striving toward our corporate objective will fully meet stockholders' extra patience."

Litton Industries grossed $2.5 billion in 1972 but showed net earnings of under one million dollars for the year and an actual loss when preferred dividends were paid. That performance contrasts with earnings of $49 million in 1971 and $67 million in 1970. In its best year, 1967, Litton netted $83 million. The spectacular five-year drop in Litton earnings (over the same period its stock price fell from $120 to $12 a share) came primarily from declines in its business and industrial systems groups. The collapse in earnings would have come even faster if Litton had not been making steady profits in its overall defense work and its navy shipbuilding contracts. Though not as profitable as in earlier years, the defense and marine systems group was reported producing a $20 million profit in 1972. However, Litton depended for that defense group profit upon still to be released navy funds, a situation highlighted in a note from the company's own accounting firm, Touche Ross & Co., and printed in its 1972 annual report. Litton's financial position, the accountants stated, was fairly presented "subject to successful resolution of unsettled matters related to the LHA Program [amphibious assault ships] and recovery of recorded contract claims" which total $164 million.

Key to the future of Litton is its new shipbuilding facility in Pascagoula, Mississippi which today has a backlog of three billion dollars in navy contracts. It was in the mid-'60s that the company decided to construct the first modern shipyard in the United States since World War II. It was to be patterned after the highly successful computerized Japanese and Swedish yards which turn out commercial ships by a modular or sectional construction method rather than the old-fashioned steel-plate-by-steel-plate technique.

Litton had in 1961 purchased the Ingalls Shipbuilding Company which had a yard on the east bank of the Pascagoula River. When searching for state and local assistance in locating its proposed "shipyard of the future," Litton used the threat that it would close down the Ingalls plant if the new yard went outside Mississippi. The state of Mississippi thereupon agreed to float a $130 million bond issue to finance construction of a 611-acre yard to be located across the river from the existing Ingalls facility. Litton was to pay all bond issue costs and interest and beginning in November 1972, principal repayments.

The first contracts awarded the new Litton Pascagoula yard were eight containerships for the Farrell and American President Lines. Almost half the costs were to be covered by a Maritime Administration subsidy. The ships were relatively simple in design and thought to be perfect for the break-in period of the yard.

In May 1968, with Litton Board Chairman Charles B. (Tex) Thornton's friend Lyndon Johnson in the White House, Litton won a competition to produce nine marine corps amphibious assault ships for the navy. The resultant contract was complex in its terms and took almost nine months to negotiate. By that time Mr. Ash's friend, President Nixon, was in the White House. (Ash has described himself as a "five-figure" contributor to Nixon in both 1968 and 1972, though last year only $500 turned up on the national records. Thornton gave roughly the same amounts to Johnson in 1964. Two other big Nixon donors, Henry Salvatori and Vernon Stouffer, are Litton board members, along with Jayne B. Spain, the Nixon-appointed vice chairman of the Civil Service Commission.)

The original ceiling cost for the nine amphibious assault ships (LHAs) was to be $1.2 billion. Payments were initially to be made on a startup cost-plus basis, then switched in September 1972 to progress payments for work completed. There was a section permitting renegotiation of the costs based on rising prices.

In June 1970, with some production problems on the containerships becoming visible, the navy awarded an unprecedented $2.1 billion contract to the new Litton yard, to be funded over five years, for 30 new destroyers. Delivery was to begin in 1974 with the final ship completed in 1978. At the same time, the older Ingalls yard across the river was handling hundreds of millions of dollars' worth of nuclear sub renovations along with construction of four navy ammunition ships.

By 1971, with LHA production delayed almost a year and the container ships lagging even more, the navy decided to cut its needs from nine to five LHAs. By then, how-

ever, it was becoming evident the five might cost as much as the original nine.

Despite all the backlogged navy work, or perhaps because of it, troubles piled up for Litton. There were labor problems, a hurricane, and just plain bad management with Litton executives in California trying to supervise the yard startup in Mississippi. Then the claims and counterclaims began.

With the commercial ships over a year behind schedule, it was clear that the two companies, Farrell and APL, would invoke the damage payment clauses in their Litton contracts. (As of December 1972, only one Farrell ship had been delivered by Litton, with the last of the remaining three delayed up to two years. The four APL ships were transferred from the new yard to the old and were to be built by the old method rather than the new modular system.) In anticipation of these damage suits, Litton itself filed against the two companies, claiming $8.4 million added costs had arisen from some 44 changes that had to be made at Farrell's and APL's requests. The two companies came back with sharp criticism of Litton and the manner in which the new yard was being run. They charged the Litton managers were not shipbuilders but "strictly aerospace oriented"; that there was "a low level of competency"; that "the amount of rework is phenomenal"; that "there was a paper blizzard" of incorrect drawings in the computerized operation; and that 14 months passed before Litton hired "an outstanding naval architect" for the yard. The chief of the Martime Administration's Office for Ship Construction studied the Litton allegations and found them "wholly untenable," as to liability of the two companies for changes. Counsel for Farrell Lines implied Litton had filed false claims. "Frankly," Elmer C. Moddy wrote in one brief; "we don't think most of these [Litton] claims have any validity at all and they are set up primarily, as we see it, almost as an offset to the claim we are going to have for liquidated damages under the contract." Finally, in the end, Litton was given 35 extra days on its contract due to the impact of Hurricane Camille, but no money. In turn, under the same settlement, Litton had to pay the two ship companies $5.5 million for late delivery.

Dealing with the navy has proved a different matter. Litton has again filed initial claims for added costs because of changes, even though the navy has penalty clauses for late delivery. In the LHA contract, Litton has sought an additional $270 million related to the cancelled four ships. (The navy already has agreed to pay $109 million as a penalty for cancellation as specified in the contract.) Litton last March also asked that the entire contract be reset, with new target costs at nearly $237 million per ship, up from the original $133 million. Litton also sought a delay in switching over to progress payments—as against cost-plus—for fear there was no measurable progress to be seen for the $395 million the navy had sunk into the LHA program by November 1972.

Renegotiation of the LHA contract was important to Litton, a fact emphasized by Ash who was a participant. At one June meeting he told navy negotiators that the progress payment switch, which could require Litton repayments to the government, would cause a cash crisis for the company. He threatened to go to the White House to settle the question. In the end, the navy gave Litton a six-month extension for the switch-over—until February 28 of this year—using damage done by Hurricane Camille as the excuse.

Last summer Litton also filed three extraordinary claims against the navy related to the nuclear submarine and ammunition ship contracts that were being performed at the old Ingalls yard. Altogether they totaled $164 million and are now in preliminary review stages before the Armed Services Board of Contract Appeals. As noted earlier, Litton's accountants said their analysis of the company's financial position rested on the prospect that "recovery of recorded contract claims" takes place. Some $41 million of those claims, the accountants noted, had as of July 31, 1972 "been recorded as receivables and inventory"—in other words as assets of the company.

Rather than accepting the claims, however, the navy appears to be vigorously fighting them. Admiral Hyman Rickover, who heads the navy's sub program, was so outraged by the claims that he recommended an investigation to see if Litton had broken the law for "misrepresentation, if not fraud" in trying to recover money from the navy for cost overruns. In his memo, Rickover said delays "were in fact caused by [Litton's] own poor planning, by its manpower shortages . . . and by mismanagement of the contract," words that seem to echo earlier charges by Farrell Line executives.

According to Senator William Proxmire, the commander of the Navy Ship Systems Command has established a three-man team to investigate Litton's claims. (It is ironic that a civil lawsuit going back almost 20 years is set for retrial this year. Thornton and Ash, then working for Hughes Aircraft, are accused of allegedly having false claims filed in an air force contract to extract larger payments from the government.)

In at least one of the Litton claims, the navy has already filed a counterclaim against the company for $3.7 million in penalty payments. One defense official says such government counterclaims will eventually total at least $12 million in the three cases.

What effect all this will have on the major destroyer contract remains to be seen. Critics of that contract say warships—which must constantly be changed to take the most up-to-date internal equipment—cannot be built on a modular basis. Nevertheless, Litton is pushing ahead. Fabrication of the first section of the first destroyer was started last June, one month early. Navy officials have already forecast some slippage in the destroyer contract but still are uncertain about the long-term prospects. Through 1972, $1.4 billion had been appropriated for 16 ships. Under Litton's schedule, the remaining 14 should be federally funded this year and next, with Ash presiding over the Office of Management and Budget.

But Litton's interests in federal dollars to be controlled by Ash go far beyond the navy funds in the defense budget. There is, for example, the company's impact on Pascagoula and its environs and the many federal grant and aid programs that it stimulated. A primarily federally funded manpower program paid $2.3 million in 1972 to Litton for training 510 prospective new Litton shipyard employees. Lacking any substantial public transportation, yet facing an influx of almost 10,000 new workers, Pascagoula has a grant from the federal urban mass transportation program. A $150,000 federal grant is paying half the cost of expanding the highway entrance to the old Ingalls facility. Special overpasses have been built with federal highway funds; more are being planned and financed.

Last month a $1.7 million grant was awarded for a new sewage treatment plant, under the same program that President Nixon cut in half. A shortage of some 2500 multifamily dwelling units is being alleviated, thanks to subsidized housing given builders through HUD. The local schools are getting impact aid of $200,000, thanks to the presence of navy children. The availability of industrial and drinking water has become a problem and the local county officials are seeking over four million dollars from the federal government for an additional reservoir. The hospital is some 150 beds short and is looking for federal aid. Thus, federal support for Litton shipbuilding has already grown well beyond navy contracts and must continue if it is to provide the means for the local populace to solve problems created by Litton's presence.

What can OMB's Roy Ash do in this situation that will not have the appearance of conflict of interest?

THE WAY WE PAY

Twelve days of Christmas bombing and last spring's North Vietnam offensive have increased the cost of the war anywhere from one billion to two billion dollars—probably not enough to require another supplemental appropriation by Congress. The President can always reduce other military operations, deplete stockpiles (the military is said to be running low on bombs), draw against unexpended balances in last year's budget and extract money from unpopular training and procurement categories. And when that is done, Mr. Nixon can still fall back on his authority to reprogram $750 million in the defense budget, an authority he has so far not found necessary to use.

The Johnson administration once sought a special supplemental to meet Vietnam war costs, but the Congress was so mean about it that the White House backed off. For the most part Johnson simply misled Congress (and perhaps himself) about the cost of the war. Rather than raise taxes or dismantle the Great Society, he was willing to pump huge deficits into an already overheating economy. With the economy, after three years of sluggish performance, once more expanding, Mr. Nixon is determined to pay for the war as he goes while holding down taxes—or, to be more precise, while holding onto big business tax breaks like the accelerated depreciation allowance. That is why, on so dubious a prerogative as impoundment of previously appropriated funds, the President has risked so much prestige. Only in this way can he shift priorities within the $250 billion limit and still spend more for defense.

Through his power to carry over unexpended but appropriated funds from one year to the next, a careful President can spend more than the budget would seem to allow. At the end of fiscal year 1972, for example, the total unexpended balances for the federal government came to $266.7 billion, setting up the kind of pipeline through which the Department of Defense could get double the money Congress actually appropriated for that year. Senator Proxmire computes that between fiscal years 1968 and 1972 the Pentagon actually spent $21.6 billion more than Congress appropriated! "One thing I've learned," one Senate aide says, "when they really want to, they can get the money, maybe just by shifting it out of some unpopular program—but not B–1 or ULMS money, of course, they wouldn't dare take it from anything that sexy."

Upwards of nine-tenths of the work of Congress, political scientists say, is concerned with spending issues. "But the system just isn't that tight," notes Representative Joseph Addabbo (D, NY), a senior member of the House Appropriations Committee. Even money used for training flights in this country can end up in open allotment funds for support and maintenance of US forces in Vietnam—or just slush around under broad headings like support and maintenance of the air force.

When Congress approves a defense budget of $77 billion, it is really providing a broad grant of executive discretion rather than a list of line-item expenditures. That, at least, is how the White House regards it, and it is not going to be easy to hold this Executive to spending solely for the purposes the appropriators originally had in mind. John Ehrlichman, the presidential assistant for domestic affairs, has told reporters that we can't look just at the law the Congress passed, we have to "learn to read all the laws." By reading all the laws, Ehrlichman comes to the conclusion that the President

"has very broad powers in determining how these expenditures should be made." So great is the discretion that the Congress implicitly delegates, the reporters may have wondered why the administration bothered at all in the last Congress to seek emergency powers to limit spending.

All that the 92nd could do to override a veto and fund a water pollution program did not affect the sway of the Office of Management and Budget, which subsequently impounded six billion dollars earmarked for water treatment plants. Impoundment is not a veto; it is a "super-veto," the authority for which comes from the Anti-Deficiency Act of the 1920s giving the President some limited power to "effect savings." By impoundment, the OMB has gutted water purification, Indian health care, low interest federal loans and conservation payments to farmers, and soon, Senator Humphrey predicts, will put a lid on the school milk program.

Yet, this impounding has barely dented the projected deficit, leaving six billion dollars still to shave and only six months of the fiscal year left to do it. So last week on its own the administration stopped considering all applications for low- and middle-income housing subsidies, making it impossible in many cities to build anything but luxury housing. The "temporary hold" affects ownership and subsidy programs for low-income families, new public housing projects, open space and water-and-sewer grants—not just for six months but for the next 18. To Representative William A. Barrett (D, Pa.), the chairman of the housing subcommittee of Banking and Currency, the HUD freeze is "blackmail" aimed at forcing Congress to lump model cities and urban renewal programs into a special revenue sharing package. For the poor it is another bill come due for Vietnam, "fiscal responsibility" and the tax depreciation allowance.

Last fall, when Congress defeated a White House bid for special powers to slash the budget, the legislators said they did not want spending decisions made, as Senator Charles Mathias (R, Md.) put it, "by some nameless, faceless bureaucrat not answerable to the people of America." But after all the brave words about the power of the purse, the Constitution, and even the Magna Carta, the President was allowed to fall back on the enormous prerogatives he already claimed. At least the spending ceiling Mr. Nixon demanded had a definite limit on the amount he could cut from any one program. With impoundment he can shut down an agency. Even without impoundment the "faceless bureaucrats" at OMB can dawdle for months as they draft and redraft the rules and regulations for the administration of almost any congressionally authorized spending.

Recently 14 Senate chairmen intervened in a case before the United States Court of Appeals for the Eighth Circuit, disputing the President's power to hold back federal highway funds that Congress told him to spend. Because the highway trust contains a specific prohibition against impoundment, a victory here may decide nothing about the President's discretionary right to freeze housing subsidies and impound water pollution grants. That is why Senator Sam Ervin (D, N.C.), chairman of the Senate subcommittee on the separation of powers, promises to introduce a bill making illegal the whole practice of impoundment without explicit permission of Congress. At stake is the ability of the President to keep the war going without wrecking the economy. Should he lose his "super veto," not even price controls and high interest rates will save the administration from more inflation.

'50's Suit Linked Ash to False Affidavits

(By Morton Mintz)

Los Angeles.—In the early 1950s, the Air Force was unknowingly paying millions of dollars extra to Hughes Aircraft for weapons control systems.

The parent Hughes Tool Co., owned by multi-millionaire Howard Hughes, was in ignorance, too. Hughes Tool, like the Air Force, was getting phony financial reports from the Hughes Aircraft Division.

The irregular practices set off an epic executive suite struggle in which one of the principals was Roy Lawrence Ash, the man picked by President Nixon a few weeks ago to be director of the Office of Management and Budget.

Ash's principal antagonists were several high-ranking certified public accountants who finally quit rather than go on working for him and his boss, Charles B. (Tex) Thornton.

Later, Ash and Thornton left, going on to found Litton Industries, the giant conglomerate now in disputes with the Navy over hundreds of millions of dollars in shipbuilding claims. Howard Hughes went on to become the most pubilized recluse in history.

The struggle took place more than 20 years ago. But it is destined to be re-enacted here this spring, when there will be a retrial of a libel suit brought against Thornton and Litton Industries by Noah Dietrich, who for 32 years was Howard Hughes' chief executive officer.

The suit is but one of a half-dozen, dating back to 1959, that detail the key role played by Roy Ash in the revolt of the Hughes Aircraft CPAs. This maze of litigation had its bizarre aspects, and these drew sporadic publicity. But the involvement of Ash appears to have attracted negligible public attention.

The following account was reconstructed from records in Superior Court and the Court of Appeal, including trial transcripts, depositions, exhibits, lawyers' briefs and judges' rulings:

The story begins at the end of World War II. Roy Ash got out of the Army Air Corps. He was 27. He had no college degree but he had served in a unit that was revamping military procurement along business lines. He entered Harvard's Graduate School of Business Administration and was graduated in 1947, first in his class. He then joined the statistical department of the Bank of America in San Francisco.

In Dearborn, Mich., meanwhile, Thornton had been jockeying for the chance to run Ford Motor Co. and had aroused hostility from certain other executives. He had found that his timetable for climbing the executive ladder didn't coincide with Henry Ford II's and was preparing, at age 35, for a parting that everyone concerned wanted to be amicable, outwardly.

The parting came in 1948, when Howard Hughes hired him on the recommendation of Ira C. Eaker, a retired Air Force general who was the Hughes Tool vice president in charge of Aircraft Division operations.

Executive titles are not always a reliable guide to the levers of power. They weren't at Hughes Aircraft. On the organization chart, Eaker was at the top. A fellow retired Air Force general, Harold George, had the title of general manager. Thornton's title was assistant general manager. Ash's was assistant comptroller (although he is listed as "chief financial officer" in an entry he supplied for "Who's Who in America" and in the recent White House press release on his appointment to head the federal budget bureau).

The reality was much different. No one has been blunter about this than Noah Dietrich who, reigning from the peak of the Hughes Tool Co. pyramid, was the man closest to the Howard Hughes sphinx.

Eaker and George were mere "customers' relations" men, according to Dietrich. Himself a CPA, he said that neither of the generals was knowledgeable about accounting, nor, for that matter, about corporate management. Eaker, in his own testimony, described his job as "liaison" with Hughes Tool.

As for George, he was "not running the plant," Dietrich said. In a memo to Dietrich in September, 1953, an expert in corporate management, Prof. Harold Koontz, spoke of the general as a sort of "pleasant spiritual leader who has furnished a symbol of unity . . ."

A setup of this sort "invariably sets the stage where some aggressive individual runs with the ball," Koontz said. "We know, of course, that Thornton has been this individual. . . ." Thornton once acknowledged that the real power was his. "Most administrative and business management decisions were made in my office," he said in a letter to Howard Hughes.

Ash, on the organization chart, was subordinate to division comptroller William B. McGee. Actually, Ash was Thornton's man, reporting to him directly not through McGee several times each week. Thornton belatedly made it official in October, 1951, when he designated Ash "acting comptroller."

Long before this, Thornton had put Ash in charge of all accounting at Hughes Aircraft although Ash is not an accountant. "I was in charge of accountants," Ash has said. Among them were the CPAs who eventually revolted.

One of them was James O. White, chief accountant in the comptroller's organization throughout 1951. An authority on aerospace accounting, who has taught the subject at four universities, he was responsible for the general ledger and supervised 300 men through six department managers.

During the summer of 1951, White began to notice irregularities in record keeping. He reported them to McGee, his nominal boss. Initially, McGee thought that the irregularities "could be errors, . . . but gradually he became convinced, as we became convinced, that they were deliberate," White has recalled.

White kept on complaining to McGee until it "became obvious that this was doing no good." Finally, McGee told him that "Roy Ash was now in charge" and that he should "accept his orders."

For a time, White did just that, to the point of becoming an admitted accomplice in accounting practices he regarded as improper.

"Ash is one of the world's great talkers," White has said. " . . . he would go into the oratory . . . that we weren't ever really cheating the government . . . and there were even times when I went away believing it—momentarily."

The spell didn't last, giving way finally to violent arguments not only between Ash and White, but also between Ash and White's superior, C. E. (Bill) Ryker, manager of accounting.

Some of these arguments concerned Ash's orders to over-credit inventory accounts, that is, to record larger withdrawals of materials than actually had occurred. White testified that the purpose was to enhance the appearance of authenticity of false affidavits supporting applications to the Air Force for payments for work completed.

White said Ash told him that over-crediting "will enable us to get more money from the Air Force." Eventually, Hughes Aircraft repaid $43 million to the Air Force.

By over-crediting inventory accounts, the division also caused a fictitious inflation in the cost of selling the weapons system. The result was a reserve of profits hidden in the inventory accounts which enabled the division to claim to the Air Force that it was

operating within the 10 per cent profit limit agreed to in the contract.

The process caused some accounting nightmares. Certain inventory accounts were showing "credit balances" that more went out than was there—a signal to accountants that something is wrong. This went on for months on end, meaning, said White, "that either somebody is deliberately putting wrong entries" in, "or is completely ignoring what might be actual error."

ORDERED "IMPOSSIBLE"

White said he told Ash it would be impossible to make additional entries in such accounts. "Make the entry anyway," he said Ash told him. "That was it."

Under questioning by attorneys for Thornton, White said Ash made it clear he was carrying out Thornton's orders. If White or other CPAs would say, "Well, gee, he is not the boss," Ash would counter with, "Oh, yes, he is," or, "He is really running this show," White said.

In the monthly reports to Hughes Tool, White testified, Ash turned around 180 degrees and told White to post entries that would cover up the over-crediting and thereby make the Aircraft Division's profit performance look brighter. Without a piece of paper to support it, White said, Ash might order an entry debiting inventory and crediting cost of sales.

"They were entries that were just false entries," White said. Ash's cost accountants handed them to White's people, who posted them. "I have heard Roy Ash say, 'Make an entry debiting so-and-so and crediting so-and-so,'" White said. "Half-an-hour or two hours later or so the entry was in my hands, and they were just figures needed to balance a predetermined profit."

White said Ash turned away protests by saying about such entries, "You've got to make them: Thornton promised the Tool Co. he'd make so much money this month and we're to make it. So here's the entry . . . you put it in the book."

White obeyed. On many occasions, he and Bill Ryker "argued rather violently that it wasn't right," but Ash prevailed. He said "that we shouldn't be questioning these things, that . . . they weren't our responsibility . . . that I ought to take my orders like a good company man does and like he did." White also recalled Ash saying, "You should be loyal to the division" and to him and Thornton. Loyal to the division over the parent company? White couldn't swallow that.

DENIED IN COURT

In a courtroom appearance Ash denied White's charges. He testified that he had never been ordered by Thornton to have improper entries made and had never issued such orders.

Ash was asked if he had ever made a statement that he himself had objected to the practice at Hughes Aircraft of "hiding profits in inventory." His answer was, "Never made the statement."

Lawyer Harold Rhoden then tried to show that Ash had impeached himself because the answer was inconsistent with deposition testimony in which they had had this exchange, slightly abbreviated here:

"Q. Did Mr. White ever say that he objected to hiding profits in inventory or use that expression?

"A. He may have objected to me just as I objected on the same points . . .

"Q. . . . you also objected to it?

"A. I did . . .

In a second deposition, Ash affirmed those answers.

But confronted with them in court, he said, I think I was confused . . . tricked . . ."

Gorden MacDonald, an accountant who actually made the disputed entries, denied in court that he had ever heard White or Ryker arguing with Ash against overcrediting the inventory accounts. MacDonald was reminded that in a deposition earlier, he had not only heard such arguments, but had quoted Ash as saying "You run the general books. Cost people will worry about the cost accounting. Keep out of this function."

His memory refreshed, MacDonald said it was his deposition testimony that was correct. In this way, he became a reluctant witness against Ash.

Sometime in 1951, Ash ordered an end to physical control of the inventory, in which storekeepers in locked, caged areas issued parts in exchange for requisitions. He replaced this system with another in which the parts were made accessible to the workmen, who then were supposed to fill out requisitions and drop them in a specified box. But after a time a check showed that far more parts had been taken than had been requisitioned.

The check demonstrated the lack of an adequate inventory control system which, White said, "always results in excessive usage of parts," and, as a result, higher costs to the ultimate customer—in this case, the Air Force.

White said Ash met the situation by bringing in a large number of his cost-accountants nights and on a weekend "to cover up the shortages."

Working overtime under Gorden MacDonald's supervision, White told Thornton's lawyers, the accountants made a list of the parts for which requisitions had not been submitted, then prepared thousands of new ones.

CLOCKS SET BACK

These "midnight requisitions" were stamped by time clocks set back to various dates and were signed by Ash's men, White said.

"The people deliberately dirtied them, threw them on the floor, wrinkled them, handled them with dirty hands in order to make them look as though they had been prepared and processed by shop personnel," White said. "They were complete forgeries."

White said he protested to Ash that there had been a "proper way" to handle the problem: "prepare inventory shortage reports and write the inventory shortage off." "What did Ash say?" White was asked. "He said he wanted to do it this way."

As for the affidavits to the Air Force, White had seen some that overstated the percentage of work completed. Ash, White said, "admitted" that inflated percentages were being reported "so we can get the money . . . Tex wants to get the money, and we're to do it in any way we can to get it." Ash testified he had signed some of the affidavits.

Sometime in mid-1951, White, Ryker and three other CPAs became convinced that further complaints to Ash were futile because he, as White put it, was "merely a henchman . . . for Thornton"; that Ash and Thornton both had to go, and that if they didn't the CPAs would quit rather than jeopardize their professional and personal reputations any longer by allowing themselves to be used to defraud the government.

The CPAs secretly contacted Frederick J. (Jack) Strickland, who only recently had gone to work for Roy N. Sherwood, comptroller of Hughes Tool's West Coast operations. During the first half of 1951, Strickland had been in charge of a team for Haskins & Sells, an independent firm of CPAs, that audited the Aircraft Division's records.

RECORDS SMUGGLED OUT

At the time of the audit certain crucial records were missing—now, however, Strickland got these and other records from the division CPAs, who smuggled them out.

Strickland relayed his preliminary findings to Sherwood and Executive Vice President Noah Dietrich, who was getting additional indications of irregularities from Malcolm Devore of Haskins & Sells and from A.V. Leslie, Hughes Tool's vice president for finance.

Dietrich sent Strickland to the aircraft plant to gather more evidence. He also called in Thornton to tell him that the CPAs, orally and in writing, had reported they were being required to credit inventory accounts that already had credit balance and to engage in other improper accounting activities.

Thornton told him, Dietrich testified, that the Air Force contract limited profits to about 10 per cent and that the books, as a result, were indeed adjusted as necessary to indicate that rate of profit. "He admitted it" Dietrich testified.

As for himself, he said, he was "concerned and alarmed" to learn that inventory accounts were being over-credited—a practice Thornton had kept secret from him. As a CPA, Dietrich said, he recognized the ultimate impact to be fraudulent: ". . . you are improperly borrowing money from the Air Force on which you are not paying interest."

By September, the CPAs had assurance that Ash and Thornton would be fired. The assurances were taken seriously. Dietrich, after all, was the one man with access to the elusive Howard Hughes even if he lacked authority on his own to fire the executives.

In the interim, the CPAs were asked to stay on. They did so, expecting Ash and Thornton to be fired quickly so that they could, in White's words, "come back and straighten out the mess." But a hitch developed: Hughes refused for almost two years to give Dietrich the firing authority he wanted.

In October, Dietrich said, he confronted Thornton with a copy of a request of a progress payment backed by a false affidavit on costs. Thornton contended that all defense contractors were doing the same thing and he saw nothing wrong with it, Dietrich testified. Dietrich ordered a halt to the practice.

On Nov. 1, Ash, having learned of the CPAs' contacts with Strickland, barred him from the plant.

On Dec. 4, Haskins & Sells gave Dietrich a summary memo listing "observations . . . based on statements made to us by Aircraft personnel" and on the condition of division records. The memo was harsh on Thornton, expressing the belief that he "is unprincipled and ruthless and is universally disliked; cannot be trusted." Ash, the memo said, "appears to be rather deeply involved, directly or indirectly, in the deception."

The memo also registered the belief that division management regards its interests as "separate and apart" from Hughes Tool; discloses as little information as possible to "outsiders," including Gen. Eaker; employs "obfuscation" as the device that "best serves their policy of nondisclosure," assumes that "any desired objective justifies any necessary means."

CLEAN AUDIT REFUSED

Finally, Haskins & Sells warned that the records were in a state that it might have to qualify its certification of them (ultimately, the firm did refuse to give the division a "clean" audit; the Mellon National Bank then refused to renew a $35 million loan.)

On Dec. 20, Bill Ryker, in a memo to Comptroller McGee, said that a three-month effort to find the basic defects in the cost-accounting system had isolated 23 of them, including an apparent attempt to "pad" certain costs. He looked forward to remedying the situation "if we receive the promised cooperation and authority."

He never got it. On the first Sunday in January, 1952, Ryker and White drafted an "ultimatum" letter to Dietrich. The next day, Jan. 7, they told a Haskins & Sells official that they intended to resign en masse.

The "ultimatum," delivered on Jan. 11, had five signers—Ryker; White; J. N. Barker, supervisor of fixed price cost accumulation; H. J. Johnston, supervisor of the general ledger section, and cost analyst H. C. Waken.

The letter briefly recited the irregularities and recalled the September promise of swift corrective action.

If the delays continued, the five warned, they would resign rather than "jeopardize our reputations as certified public accountants."

Dietrich called the CPAs in. He testified they told him the Air Force had been overcharged millions of dollars by "improper practices." One of them told him, "You can't rule out the possibly of fraud. . . ."

Dietrich asked the CPAs to stay for at least a month or two, admitting he still lacked the authority from Howard Hughes to grant their one implacable demand: to fire Ash and Thornton. Dietrich couldn't do it.

"PLACE TO HIDE IT"

Dietrich summoned Thornton for more talks. Finally, he said, Thornton told him:

"Noah, I want to tell you in confidence that we are actually making more than 30 per cent on this contract, and in order to keep it, we are going to have to hide it some place, and the best place to hide it is in the inventory account."

As for the affidavits that made excessive claims on the Air Force, Thornton "didn't see anything wrong" in the practice, saying it was "generally indulged in by military contractors," Dietrich testified.

He confronted Thornton with the CPA's evidence of fake financial statements made by the Aircraft Division to Hughes Tool. "He didn't deny it," Dietrich said.

Thornton was also told of the CPA threat to resign, and took the position that the plant had autonomy and that I should keep my hands out of it," Dietrick continued.

Gen. Eaker asked Ash to bring the five CPAs to his office.

Later in January, Eaker, who along with Gen. George was credited with "good personal integrity" in the Haskins & Sells memo, talked to the men, one at a time. It was to no avail. The five sent Eaker resignation letters on Jan. 23, 1952.

"I am unable to accept your request that I be a 'good company man,' since this term was used to indicate that I was to be loyal to the division and its policies rather than being loyal to the Tool Company," James White told Eaker.

"Two more CPAs followed including: H. Bradshaw, supervisor of the Aeronautical Cost Group. "Inasmuch as the use of the word "fraud" is apparently ill advised," he said in a memo to Barker and Ryker, "I will say only that the clean and workable accounting system it was our end purpose to effect is not considered desirable by top management."

Thornton and Ash stayed on. Dietrich, trying to bounce them, tried to get permission from Hughes. No response.

June brought a counter-thrust: Thornton, Gen. George and scientists Simon Ramo and Dean E. Woolridge sent a letter to Hughes through Gen. Eaker. Dietrich, they charged, was trying to "seize personal power without regard to the consequences to this company" and had engaged in a "plot" that could have "seriously injured our national security."

Dietrich and Thornton, meanwhile, were having another dispute about refunds to the Air Force.

REFUND MADE

Dietrich decided early in 1952 that he wanted a "token" refund of $5 million made, pending a determination by Haskins & Sells of the true amount owed. Thornton, he said, resisted.

Early in 1953, an Air Force contracts official, Barry Shillito, now an Assistant Secretary of Defense, threatened legal action if a refund were not made. In the summer about $5 million was actually paid over. Thornton claimed the refund was voluntary. Dietrich said it wasn't.

The audit was completed by Haskins & Sells, that fall, on Oct. 31, 1952. The report said Hughes Aircraft had overcharged the Air Force by $43.4 million; Hughes paid the balance during the late 1953 and early 1954.

In mid-1953, by Dietrich's testimony, he had finally gotten Howard Hughes' permission to tell Thornton and Ash to resign or be fired. They resigned—they said voluntarily. Thornton testified that Dietrich even asked him to withdraw his resignation, stay with the company, and "be a candidate to succeed him." Dietrich, who was 65 at the time of the resignation, denied he had said anything of the sort.

Ash and Thornton, as has been noted, went on to found Litton Industries. The litigation that put the Hughes Aicraft case on the public record was born at Litton.

A man named Emmett T. Steele participated with Ash and Thornton in the founding. In 1958 Steele filed a suit accusing Litton Industries and Thornton of fraud in depriving him of certain stock allegedly promised him in an oral contract.

A jury awarded Steele $7.6 million. The case was appealed and remanded for a new trial. The upshot was a settlement of $2.5 million.

In 1962 in preparing for the trial that led to the $7.6 million award, Steele's lawyer, Harold Rhoden, took a deposition from Dietrich. Answering questions as a prospective witness, Dietrich recounted the CPA's revolt episode and told of other matters involving Thornton.

In December of that year, Thornton charged in a press release that Dietrich had been "maliciously defamatory" in his deposition. Thornton filed a $40 million slander suit.

CALLED FALSE

At the same time, Litton sent a letter to 12,000 employees, accusing Dietrich of "irresponsible and malicious attacks" and denouncing as "completely false" a charge attributed to Dietrich that the Air Force had been overcharged several million dollars as a result of improper accounting methods at Hughes Aircraft.

The Thornton slander suit was rejected by the Superior Court of Los Angeles and then by the Court of Appeal in September of 1966. Dietrich, meanwhile, had filed a libel suit against Litton and Thornton, in which he asked 40 cents in actual damage and $1 million in punitive damages. This action was tried in early 1968 in Superior Court.

AWARDED $6 MILLION

After a two-month trial, a jury awarded Dietrich punitive damages of $5 million against Thornton and of $1 million against Litton.

Judge Bayard Rhone, who had said he would set aside any verdict that was not what "I think is an obvious correct decision," set it aside.

He said he would grant a motion for a new trial, and did when one was made later.

Rhoden, appealed with a 531-page brief accusing the judge of "unabashed bias and patent prejudice" against Dietrich.

The Court of Appeal, in a decision in November, 1970, said that Rhone, who is now dead, erred in overturning the jury verdict. But the court ordered a new trial, saying it could reverse a motion for a trial "only when, as a matter of law, there is no substantial evidence to support a contrary judgment."

The new trial may begin in April.

Mr. McGOVERN. Mr. President, last year, I sought the highest office in this land based on my convictions as to the directions in which this country ought to move.

While that effort did not succeed, I returned to this body with the high hope that I could represent my State in the constitutionally prescribed functions of the Congress. I now find that the actions of OMB and the President in recent months have greatly reduced the powers of the Congress.

There are many things we must do, Mr. President, to gain back our lost powers so that we may effectively do the job our constitutents have sent us here to do.

Let us at least take this first small but significant step in lifting the bonds which have been put upon us.

Should we fail to do so, then we shall have forfeited the oncoming struggle against arbitrary Executive power.

The PRESIDING OFFICER (Mr. BIDEN). All time has now expired. The question is, Shall the bill (S. 518) pass?

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), and the Senator from Connecticut (Mr. RIBICOFF), are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from Colorado (Mr. HASKELL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), the Senator from Connecticut (Mr. RIBICOFF), the Senator from Mississippi (Mr. STENNIS), and the Senator from Mississippi (Mr. EASTLAND) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senators from New York (Mr. BUCKLEY and Mr. JAVITS), the Senator from Hawaii (Mr. FONG) and the Senator from Florida (Mr. GURNEY) are necessarily absent.

The Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Florida (Mr. GURNEY) and the Senator from New York (Mr. JAVITS) would each vote "yea."

The result was announced—yeas 63, nays 17, as follows:

[No. 7 Leg.]

YEAS—63

Abourezk	Hart	Nelsen
Allen	Hartke	Nunn
Beall	Hatfield	Pastore

Bentsen	Hathaway	Pearson
Bible	Hollings	Pell
Biden	Huddleston	Percy
Brock	Hughes	Proxmire
Burdick	Humphrey	Randolph
Byrd, Harry F., Jr.	Inouye	Roth
Byrd, Robert C.	Jackson	Schweiker
Cannon	Kennedy	Sparkman
Case	Long	Stevens
Chiles	Mansfield	Stevenson
Clark	McClellan	Symington
Cook	McClure	Taft
Dominick	McGee	Talmadge
Eagleton	McGovern	Tunney
Ervin	McIntyre	Weicker
Fulbright	Metcalf	Williams
Goldwater	Montoya	Young
Gravel	Moss	
	Muskie	

NAYS—17

Aiken	Dole	Packwood
Baker	Domenici	Scott, Pa.
Bartlett	Fannin	Scott, Va.
Bennett	Griffin	Thurmond
Cotton	Hansen	Tower
Curtis	Hruska	

NOT VOTING—20

Bayh	Fong	Mathias
Bellmon	Gurney	Mondale
Brooke	Haskell	Ribicoff
Buckley	Helms	Saxbe
Church	Javits	Stafford
Cranston	Johnston	Stennis
Eastland	Magnuson	

So the bill (S. 518) was passed, as follows:

S. 518

An act to provide that appointments to the offices of Director and Deputy Director of the Office of Management and Budget shall be subject to confirmation by the Senate

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, effective on the day after the date of enactment of this Act, the Director of the Office of Management and Budget and the Deputy Director of that Office (originally established by section 207 of the Budget and Accounting Act, 1921, and redesignated by section 102 of Reorganization Plan Numbered 2 of 1970) shall be appointed by the President by and with the advice and consent of the Senate, and no individual shall hold either such position thirty days after that date unless he has been so appointed. The Director and Deputy Director shall each be appointed for a term of four years, except that—

(1) the terms of the individuals first appointed in accordance with this Act, after the date of enactment of this Act, to hold such positions shall commence on the date of their appointment and end immediately prior to noon January 20, 1977;

(2) any individual appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of that term; and

(3) nothing contained in this Act shall impair the power of the President to remove the occupants of such offices.

Mr. ERVIN. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. CANNON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AIRPORT DEVELOPMENT ACCELERATION ACT OF 1973

The PRESIDING OFFICER (Mr. BAKER). Under the previous order, the Senate will now resume the consideration of S. 38, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (S. 38) to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such act, to amend the Federal Aviation Act of 1958, as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes.

Mr. MANSFIELD. Mr. President, will the Senator yield, without losing his right to the floor?

Mr. CANNON. I yield.

UNANIMOUS-CONSENT AGREEMENT

Mr. MANSFIELD. Mr. President, I am about to propound a unanimous-consent request on the pending business. I think this has been cleared all around.

Mr. President, I ask unanimous consent that there be a time limitation of 1½ hours on the pending bill, with an additional one-half hour for any amendments thereto, with 1 hour on the amendment to be offered by the distinguished Senator from Kentucky (Mr. COOK), and with 10 minutes on motions and appeals which are debatable, and under the usual rule.

The PRESIDING OFFICER. Is there objection?

Mr. HARRY F. BYRD, JR. Mr. President, reserving the right to object, I would like the opportunity to have 15 or 20 minutes to query the manager of the bill. It may not take that long, but I would like enough time to get a better understanding of the bill than I have now.

Mr. MANSFIELD. The Senator will have that time.

Mr. HARRY F. BYRD, JR. I thank the Senator.

Mr. MANSFIELD. The time in opposition is to be under the control of the distinguished Senator from New Hampshire (Mr. COTTON) or whomever he may designate.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request? The Chair hears none, and it is so ordered.

Mr. CANNON. Mr. President, I yield myself 10 minutes.

I may say that I do not intend to use my one-half of the hour and a half, and I will be delighted to yield such time as is necessary to the Senator from Virginia for his inquiries, provided I have not answered his questions in my opening statement. I will yield whatever time he desires.

Mr. President, I take great pleasure in presenting to the Senate for consideration, S. 38. This bill is the result of many days of hearings and consideration by the Aviation Subcommittee and indicates our best efforts to develop a more responsive and helpful Federal program to hasten the development to the Nation's aviation facilities.

As most of my colleagues know, S. 38 is almost identical to S. 3755 of the 92d Congress, the bill passed by the Senate on August 10, 1972, by a vote of 83 to 2. Following passage by the Senate last year, the House passed a very different version. In fact, the House bill had only one significant provision. It prohibited, for an 18-month period, State and local head or use taxes on passengers in air transportation. It did not address itself to the serious, sometimes even critical financial needs of the Nation's local governmental units which own, maintain, and operate the nearly 3,000 publicly owned airports in the United States—the needs that some communities were trying to meet by levying local head taxes or use fees on passengers in air transportation.

The House did not concern itself with the airport development program but chose simply to deal with the "head tax problem," by postponing a final decision on the issue for 18 months, during which time a moratorium would be imposed

We in the Senate can take pride in the fact that our solution to the head tax problem was much broader. Our bill of last year did prohibit head taxes, user taxes, gross receipts taxes, and other forms of State and local taxation on airline passengers or on the carriage of airline passengers. But the bill did much more than that. It created a much more ambitious program to provide additional Federal funds, trust funds, to assist local governments in meeting their needs to develop additional and expanded air transportation facilities.

And this new program, created by the Senate and opposed by the administration, would not have cost U.S. taxpayers an additional dime. The program was to be entirely funded from revenues in the airport and airway trust fund, revenues which result from Federal user taxes on passengers, airlines, and private aircraft owners and operators who take advantage of the U.S. air transportation system.

Under the current user tax structure which was adopted by Congress in 1970, there are more than adequate revenues coming into the trust fund to pay for the additional Federal financial assistance that we provided for in our program. User taxes would not have to be increased to pay for the additional Federal assistance.

After weeks of very difficult negotiations with the House in conference on this bill last year, we finally succeeded in preserving, in the compromise bill, most of the favorable features of S. 3755.

On October 27, after we adjourned, President Nixon vetoed this very important legislation and issued a vague statement indicating that the issues involved in the bill needed more study.

Because the legislation has enjoyed wide support from the aviation community, the public, and from local governments across the Nation, Senator MAGNUSON and I reintroduced the measure on the opening day of the 93d Congress in order to quickly give the Congress another opportunity to express itself on the issue.

We were of the view that, since we had conducted thorough hearings on the bill last year, additional hearings were not necessary. Accordingly, the bill was considered and discussed in executive sessions of both the subcommittee and the full Commerce Committee last week.

We are hopeful that our colleagues in the House will give the bill the same early attention and speedy consideration that we have given it here in the Senate because the Nation's aviation development needs are, indeed, pressing and local governments are experiencing very serious difficulty in meeting them unler terms of the present airport and airway development program. I am hopeful that, if Congress again expresses its approval of the program contained in S. 38, the President may reconsider last year's decision to veto the measure.

I repeat that passage of the bill will not result in any additional taxes to either the general public or to the aviation system users. And no expenditures of general U.S. revenues will be required to support the increased Federal assistance provided for in S. 38.

Therefore, there seems to be no reasonable reason for the Executive to oppose this measure. However, if the President's decision on this legislation remains the same; if he chooses to again veto it after passage by both Houses, I am equally confident that there are sufficient votes in support of the bill in both Houses to override the President's action.

Now, at this point, Mr. President, I would like to explain the major features of this bill.

First, and most important, the bill increases the general formula for Federal financial participation in airport development grants from the current ratio of 50–50 to 75–25 at all publicly owned airports in the United States except the 22 largest, the so-called large hubs. This change would bring the airport development program more in line with other Federal assistance programs in transportation such as the Federal interstate highway program which is funded on a 90 to 10 basis and the aid to urban mass transit program which is funded on a ⅔ to ⅓ ratio.

Second, for airport development needs relating to airport certification for safety and for security, needs required by Federal law and regulation, the Federal Government's share of those project costs would be 82 percent. This provision will make it much easier for local government to finance new airport requirements that have been mandated by the Federal Government, requirements that in many instances have proven to be very costly.

Third, S. 38 will, for the first time, allow the Federal assistance program to fund projects involving development of airport terminal facilities which are directly related to the movement of persons and their baggage. Under terms of the current program, Federal grants may not be used for any development projects except those involving runways, taxiways, ramps, aircraft aprons, and so forth. At many of the Nation's largest airports and at many smaller facilities, too, the greatest current need is to expand and modernize the terminal buildings to facilitate the movement of passengers and their baggage between the aircraft on which they fly and the ground transportation which carries them to their final destination.

Since airline passengers pay for most of the cost of the aviation facilities development program through user taxes on the ticket, it does not make sense to continue the meaningless distinction between airfield development and terminal area development. Both are needed to improve the efficiency and the ease of air travel and both types of development should be eligible for grant assistance under the airport development program.

The committee believes, however, that the airfield portion of airport development should continue to have the higher priority because of the direct relationship to safety involved. Therefore, we have determined that grants for terminal area development projects should be limited to 50 percent Federal participation to encourage the Nation's airport operators to concentrate on airfield development.

The PRESIDING OFFICER (Mr. DOMENICI). The Senator's 10 minutes have expired.

Mr. CANNON. Mr. President, I yield myself 5 additional minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. CANNON. Mr. President, S. 38 increases the minimum annual authorization for airport development grants from the current level of $280 million per year to $420 million per year, an increase of $140 million per year for fiscal years 1974 and 1975. This increase is provided to insure that adequate Federal funds will be available so that total capital investment in airport facilities will not diminish as a result of the increase in the general level of Federal participation. With increased levels of Federal assistance, it is most important to increase the amount of Federal money available to maintain airport development under the program at the current level of at least $560 million per year. There are presently and there will continue to be adequate excess revenues in the Airport and Airway Trust Fund to finance the additional Federal participation in airport grants and no general tax revenues will be required to subsidize the airport development aid program.

Finally, Mr. President, S. 38 prohibits a new, inequitable, and potentially chaotic burden of taxation on the nearly 200 million persons who use air transportation each year. The bill prohibits the levying of State or local head taxes, fees, gross receipts taxes or other such charges either on passengers or on the carriage of such passengers in interstate commerce.

In 1970, Congress established a national, uniform system of user taxation on all users of the air transportation system and levied a tax of 8 percent on all airline tickets. That user tax was intended to finance aviation facilities development through a national program and Congress intended at the time that the Federal tax be the only tax on airline passengers.

Last year, however, the U.S. Supreme Court upheld the validity of several State and local passenger head taxes, overturning a precedent established more than a hundred years ago.

Since that time many communities have enacted passenger head taxes of one kind or another which vary in rate, scope and applicability. The committee views these taxes as an unnecessary and discriminatory burden on passengers in air transportation and as a form of double taxation which we did not intend when, in 1970, we enacted a national system of aviation user taxation.

Presently, at least 31 different government jurisdictions have levied head taxes and many other communities are in the process of doing so or are seriously considering it. We believe this proliferation of local taxes can and will undermine a sound national transportation system by causing confusion, delay, inequities, and discrimination in air transportation and must be prohibited before it gets any further out of hand. There is no need for two systems of user taxation; particularly in light of the increased Federal assistance to airports provided for in this bill.

Mr. President, we view S. 38 as an aviation development package, the components of which cannot be separated. We believe that, if the prohibition on local head taxes was not a part of the total new program, there would be need to reevaluate the increased Federal funding for airport development projects called for in S. 38. If local taxes on passengers and air carriers are allowed to proliferate nationally, and are to become a major factor in the financing of local airport facilities, then there is obviously less need for a Federal airport development program.

By prohibiting State taxation on passengers or on air transportation, the committee has accepted greater responsibility for U.S. assistance. With the increased Federal assistance, we can see no valid reason for the continuance of local passenger taxation.

Mr. President, the Commerce Committee is pleased with S. 38 and views it as a great step forward in modernizing and expanding the air transportation system in the United States. It will be responsive not only to the Nation's airport authorities, but to the passenger who uses public and private air transportation to meet his personal and business needs. S. 38 is a good bill and I hope my colleagues will support it enthusiastically.

At this time, I request the Senate adopt one technical amendment to S. 38 which was made by the committee to correct an inadvertent error in the draft.

The PRESIDING OFFICER. The clerk will read the committee amendment.

The assistant legislative clerk read the committee amendment, as follows:

Page 5, at the beginning of line 12, strike out "(g)" and insert "(f)".

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

Mr. PEARSON. Mr. President, the Airport and Airway Development Act of 1970 (Public Law 91–258) was enacted in response to a critical national need for improvement in the airport segments of

the national aviation system. The airport and airway system was in need of rapid modernization and expansion to meet the requirements of higher performance aircraft and airline passengers, as well as general aviation.

Airport development aid program—ADAP—funding has been instrumental in assisting local communities to meet the capital requirements of expanded and modernized airport facilities. The Federal Aviation Administration has obligated the full $280 million allotted for fiscal year 1972 under ADAP. During the first 18-months of the ADAP program, Federal aid was approved and obligated for new runways at 57 airports; runway extensions at 70 airports; runway reconstruction and strengthening at 164 airports; land acquisition at 179 airports; and initial phase development at 36 new airports. New taxiways have been installed at 179 airports; taxiway extensions at 64 airports; new parking aprons at 97 airports; and apron extensions at 84 airports.

AIRPORT DEVELOPMENT IN KANSAS UNDER THE ACT

Mr. President, the progress made in my State of Kansas under the ADAP program is illustrative of the accomplishments recorded throughout the Nation. During fiscal year 1972, the FAA approved five planning grants for the development of master plans. The cities of Lawrence, Newton, Wichita, and Pratt received planning grants, and the Mid-America Regional Council received a grant to structure a metropolitan system plan for the Kansas City area.

In fiscal year 1972, the FAA placed a total of eight Kansas projects under ADAP grant agreement. The following communities received ADAP funding to accomplish a variety of improvements to runways, taxiways, and aprons, and to purchase land for airport expansion: Colby, Eureka, Garden City, Liberal, McPherson, Oberlin, Olathe, and Topeka. The smaller communities require Federal airport aid to develop facilities which will serve to attract new industry and job opportunities. The larger Kansas communities need Federal airport assistance to maintain convenient and safe service for the growing volume of airline passengers.

The requirements in Kansas are reflected everywhere in the Nation: There is no State or sizable community that does not view its airport facilities as fundamental elements in its plans for prosperity and growth in the years ahead.

About 180 million farepaying passengers will be transported by the Nation's scheduled airlines during calendar year 1973. The number of air travelers continues to expand at about 8 percent per year. The States and localities, in close cooperation with the Federal Government, simply must meet the challenge of air travel—safe and convenient air travel—in the coming years.

THE NEED FOR AMENDMENTS TO THE 1970 ACT

Mr. President, the Aviation Subcommittee of the Commerce Committee has been diligent in its oversight of the ADAP program since its inception. The legislation before the Senate today—the Airport Development Acceleration Act of 1973—is the product of more than 2 years of labor by the subcommittee. These proposed amendments to the 1970 act were drafted and refined during the 92d Congress to meet specific, documented aviation system needs.

The subcommittee has held extensive hearings. Public and private witnesses have testified in behalf of the measures which this legislation contains. As ranking member of my party on the subcommittee throughout the 92d Congress, I had a unique opportunity to review not only the strengths of the ADAP program, but also its weaknesses and inadequacies.

I strongly recommend passage of the pending bill. The following points may be made in support of this position.

TRUST FUND SURPLUS

The Aviation Trust Fund under existing levels of expenditure will begin to generate a surplus in the current fiscal year. There will be a cumulative surplus in the trust fund, under present levels of expenditure, of $1.263 billion at the end of fiscal year 1977. This surplus will be money that properly should be obligated for airways improvements and urgently needed airport development projects throughout the United States. There is no justification to permit user taxes to accumulate in the trust fund while aviation system users are suffering inconvenience and operating without modern equipment at scores of airports.

Therefore, Mr. President, the Commerce Committee has recommended adoption of S. 38. The committee bill provides for timely utilization of trust fund assets to meet the requirements of our expanding aviation community and traveling public.

This permits, for the first time, Federal participation on a 50-50 basis in funding for the construction and upgrading of terminal buildings and facilities. It increases the Federal share for airport construction—including land acquisition—from 50 to 75 percent.

The increased Federal participation in funding of airport development projects does not apply to the Nation's 22 largest airports. The committee has found that these facilities generate greater revenue, proportionately, than the smaller airports serving medium sized and rural communities. The large hubs, of course, will continue to be eligible for 50 percent Federal funding of approved airport development projects.

The airport certification program mandated by the 1970 act is being implemented. All airports served by scheduled certificated air carriers will be required to comply with safety and security requirements of the certification program. The committee bill increased from 50 to 82 percent the Federal share for acquisition of safety equipment, such as firefighting equipment, and security measures such as perimeter fencing. Because some airport operators have already purchased safety and security equipment, the increased funding for safety equipment will be retroactive.

Perhaps most important of all, the committee bill increases the minimum Federal expenditures for airport development. Beginning in fiscal year 1974, the FAA will be required to obligate not less than $420 million for airport development, compared to the present $280 million minimum annual obligation for this purpose. This increased Federal aid will include $375 million annually for air carrier and reliever airports, and less than $45 million for general aviation airports. There are two purposes for increasing the minimum Federal obligation under the act: The money will be available in the trust fund and the increased Federal funding overall will insure that the total number of projects approved by the FAA for Federal participation is not diminished by the increased assistance provided in other sections of the bill.

STATE AND LOCAL TAXATION OF AIR FARES

Finally, Mr. President, the committee bill prohibits State and local taxation of air fares. The Congress intended in 1970 to preempt the States and localities from levying such taxes, as taxation on air fares is one of the predominant sources of revenue for the trust fund. Recent Supreme Court decisions necessitate the clarification of this congressional policy determination.

If more than 500 localities—or even a significant proportion of this number—were unilaterally to levy taxes on airline passenger fares, there would result an unconscionable and unacceptable burden on interstate commerce. The national system of air service upon which 180 million airline passengers depend annually would become a hodgepodge of Balkanized assessments and levies against nonresident travelers whose business or leisure takes them across State lines. The committee bill prohibits State and local taxation of air fares, but this Federal preemption is carefully balanced by substantial increases in trust fund assistance for airport development and modernization.

POCKET VETO OF COMPARABLE LEGISLATION

President Nixon pocket vetoed a bill comparable to that under consideration today after adjournment of the 92d Congress sine die. The following is the complete text of the President's memorandum of disapproval of last year's legislation:

This bill (S. 3755) would increase Federal expenditures and raise percentage participation in categorical grant programs with specific and limited purposes. I believe this would be inconsistent with sound fiscal policy. Airport development funds have been almost quadrupled since 1970 under this Administration.

It must be noted, respectfully, that airport development funds have been quadrupled primarily because Congress had the vision to enact the 1970 act—mandating the expenditure of not less than $280 million for the ADAP program. It must further be noted that Congress found it necessary to enact Public Law 92-174, prohibiting the use of trust fund revenues for operational and administrative expenses of the FAA. All user taxes must be used for capital improvements in aviation facilities and for research and development activities re-

lated to improving the U.S. air traffic control system.

Mr. President, with passage of Public Law 92–174, it becomes necessary to determine whether user tax revenues should accumulate in the trust fund while the Nation's airport system reels under the pressures of expansion and modernization, or whether those revenues should be put to timely use in funding the needed modernization. The conclusion, of course, is self-evident.

I have reviewed carefully the projected revenues of the airport-airways trust fund for the next 5 years. I am convinced that the increased Federal participation in funding of airport development, as contemplated in the committee bill, will be covered by the revenues of the trust fund. Therefore, this proposal not only relieves airport operators of a significant portion of their development costs, but it is also sound from a fiscal standpoint.

Mr. President, I strongly recommend that the Airport Development Acceleration Act of 1973 receive the favorable consideration of the Senate.

Mr. COTTON. Mr. President, I yield myself 1 minute.

I ask unanimous consent that I may delegate the time to those Senators who desire to speak in opposition to the bill to the Senator from Kentucky (Mr. COOK).

The PRESIDING OFFICER. Without objection, it is so ordered.

Who yields time?

Mr. COOK. Mr. President, I shall shortly submit an amendment to S. 38 which I submitted to the Senate last year.

As Senators will recall, under the provisions of S. 38 as presently written, 25 airports in the 18 States and the District of Columbia will receive only a 50-percent federally funded share of allowable airport project costs while all others will receive a 75-percent share.

This arbitrary distinction of 75-percent Federal share for airports enplaning less than 1 percent of the total annual number of passengers and 50-percent Federal share for those enplaning not less than 1 percent is not only illogical but also discriminatory.

I might say that this has not created a great deal of controversy in the United States, but there are many airports bordering right on the 1-percent figure and under the terms of the bill, if they go over the 1 percent, they will automatically be advised that if they have submitted a project for approval they will now fall within the 50 percent rather than the 25- to 75-percent formula. For example, let us say a community is bordering on that 1-percent figure, such as one of my own two major airports in Kentucky, Greater Cincinnati or Louisville. Then, if the community makes its investment in a project on this basis it will fall within the 75- to 25-percent formula. Then, when the community has made its investment on this previous basis, it finds itself relegated to the necessity of a complete financial reorganization on the basis of 50–50.

The very nature of air travel frequently involves a passenger departing from one of the small airports with less than 1 percent of passengers traveling to a larger one enplaning more than 1 percent and, as such, both facilities are part of an integrated whole deserving equal Federal funding. In addition, and more importantly perhaps, the source of these Federal funds from which these airport costs are to be paid is derived from a uniform base and should therefore logically be distributed in a uniform manner.

Mr. President, all this revenue is derived from passengers in all the airports. It is derived from all the airports including the 25 airports that will be disallowed the opportunity to do this according to the bill in its present form. I will read them so they will be in the RECORD. I am sorry more of our colleagues are not present, because this does not affect my State.

In the State of California, Los Angeles, San Diego, and San Francisco will fall within the 50–50 category.

In Colorado, Denver.

In the District of Columbia, Washington National.

In Florida, Miami.

Atlanta, Ga.

Honolulu, Hawaii.

O'Hare, Chicago.

New Orleans, La.

Detroit, Mich.

Minneapolis-St. Paul, Minn.

Kansas City and St. Louis.

Las Vegas, Nev.

Newark, N.J.

John F. Kennedy and LaGuardia in New York.

Cleveland, Ohio.

Philadelphia and Pittsburgh, Pa.

Dallas and Houston, Tex.

Seattle-Tacoma International Airport in Washington.

If any Member of the Senate will tell me that he does not have to go through one of those major airports to get to where he is going to get home, let him say it now, because these are the hubs. These are the airports that generate the traffic, and these are the airports that generate the funds we set up in the original act. Now we find ourselves in a position where we are saying, "You are so big and you need so much that we are going to leave you on a 50–50 basis, but everyone else in the United States is on a 75–25 basis.

Except for those exceptions in the United States where we had to continue a head tax or a seat tax, such as in Sarasota which had a bonded indebtedness in that community, all the rest of the airports in the United States, save one or two, will be prohibited from having such a tax, including the major airports that are being denied the opportunity to share on a 75–25 basis.

So they are not only saying that they cannot share in this type of formula, but they are going to be excluded from getting any other type of revenue so that they might overcome the great deficiencies that are written into this bill.

I might say that we have had no trouble, during the course of the debates on the bill and during the hearings, in seeing to it that we were denying an airport the right to have its own tax at its own base and, therefore, eliminating that possibility now and in the future, but we have even gone so far as to say, "Now, these airports can be eliminated from that procedure if they so desire, but at the same time we have put them on a 50–50 basis rather than a 75–25 basis." I think it is very interesting that these include airports through which 80 percent of the air passengers have to go to get home, unless they drive or unless they are within an hour and a half's duration from here. Yet those airports are going to be put on a different basis than is now available.

I might say that in progressively developing an improved national air transportation system, it is apparent that the large hubs are equally as important as the smaller airports and, therefore, should benefit equally from this distribution of Federal funds.

May I say that if there is one thing we need more than anything else, is to see to it that airports like Atlanta and Chicago have the funds they need. Where are these major accidents occurring? They are occurring where there are so many flights in and out on a minute's basis that anybody who has anything to do with air traffic control is being worn out. These are the airports that need the help, because that is where the passengers need the help.

I have had a daughter going back and forth to Northwestern University for 4 years, and it frightens me to death every time that young lady has to leave here and fly into O'Hare Airport at Chicago, because of the number of accidents and the number of hold-overs that have to occur over that city. And yet that airport, because it is a big airport, will be punished under the terms of this act.

Mr. President, I send to the desk an amendment to the bill and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 4, line 9, insert the following immediately after "be":

"75 per centum.",

and strike all thereafter through, and including, line 17.

The PRESIDING OFFICER. Who yields time?

Mr. COOK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOK. Mr. President, this is a very simple matter. By this amendment the arbitrary distinction is eliminated, thereby rendering an equal 75-percent share for all the airports, regardless of size.

I do not think there could be any confusion about this. When we established the Highway Trust Fund to build a highway program throughout the United States, we established it on a 90–10 percent basis. We did not say that it could be 95–5 in the President's State, and it would have to be 90–10 percent in my State. We did not say that it was going to be 70–30 percent in New York, but 90–10 percent in Kentucky. We said that

it would be uniform throughout the the United States.

This is one of the few times that I know of that a trust has been established whereby we have taken the number of facilities which are contributing by far the biggest sum of these trust funds and said that they are to be discriminated against and will therefore receive less funds than other airports throughout the United States.

Mr. President, I ask unanimous consent that the full report on the Airport Act as presented in the Senate last year, with all the figures and statistics contained therein, be obtained and placed on the desk of each Senator. I notice that we have only received a small committee report, and I would like to have the entire report from last year made available to all Members of the Senate, so that they would have all the information.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COOK. Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. CANNON. Mr. President, I yield myself 3 minutes to respond to the Senator from Kentucky.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 3 minutes.

Mr. CANNON. Mr. President, I want to first correct one of the statements of the Senator from Kentucky which was erroneous. The Senator listed Washington National Airport as being one of the airports involved. Washington National Airport is not eligible by law and could not share in the fund 50–50 percent or 75–25 percent, either way it went with respect to the problem of matching funds.

Let me say one reason for excluding them was to try to make enough money available to the smaller airports, so that we could have a substantial amount of airport development across the United States. If we are going to give the large hubs an added 25 percent, we will then limit the distribution of the funds for a number of improvement projects around the country, thus adding to safety problems that the Senator from Kentucky commented on.

Mr. President, I would also point out that at the present time there are 22 large hubs, and I have one airport in my State which is one of those 22.

I am sure that the Senator from Kentucky will recall the testimony last year of Mr. Sands, a very important witness before our committee, who furnished statistics as to what would happen if the medium and small hubs were given additional assistance by going to the 75–25-percent formula.

I would pose this question to the Senator from Kentucky. I wonder if the distinguished Senator from Kentucky has received any complaints from the large hubs about the formula distribution in the bill? I am chairman of the subcommittee, and I have yet to receive one complaint. And I have talked to the airport managers of most of the 22 large hubs. I have yet to receive one complaint. And the committee has not had a solitary complaint filed with it about this distribution.

I would also add this further comment. Many, if not most, of the large hubs operate at a profit. They return a profit to their governing institution. That is true throughout most of the United States. It is true, at least, with respect to many of them. They do return a profit to their parent agency.

Mr. President, I would like to read one paragraph from the committee report: It reads:

> While, on the one hand, the Committee has heard evidence indicating small communities have had difficulty in raising matching money to qualify for ADAP grants, we have heard no evidence indicating that the nation's 22 largest airports, the so-called large hubs, have experienced financial difficulty resulting in failure to participate in the ADAP program. On the contrary, the large hubs appear for the most part to be self-sustaining. In many cases these airports are actually profitable. Fees paid by the airlines for landing and for space rental and fees obtained from concessionaries for parking, restaurants, shops, etc., are adequate to cover both the operational expenses of the airport and to underwrite the capital investment borrowing required. The Committee asked various witnesses for examples of airports in the large hub category which had encountered difficulty in meeting the 50%–50% matching requirement. No examples have been provided. Therefore, the Committee concludes that present 50%–50% ADAP formula is adequate in assisting with airport development needs at the nation's 22 largest airports.

Mr. COOK. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOK. Mr. President, first of all, I apologize to the Senator from Nevada and state for the record that Washington National Airport was not included in the list of airports affected because they do not have to worry about this matter, since the airport is federally owned. They do not have to worry about that problem. And, I must say, they are in a category that every other airport in the country envies beyond belief. This is also true with respect to Dulles Airport which is also owned and operated by the Federal Government. They do not have that problem.

Mr. President, I am sorry that we do not have the full report on the desk of each Senator from last year. There is example after example cited in that report. There were two projects in Hawaii where they could not go ahead with the project because they would be under the 50–50 percent formula. And there were other examples where airports could not do it.

I can only say that I do believe that can be challenged. Let me point out that this will wind up being rather disturbing. There are airports on the list which, is there is a 1-percent change, will be put on the 50–50 percent formula.

Let me point out that with respect to Orlando, Fla.—which is next to Disneyland—if there is an improvement in their conditions which is quite possible they will find themselves on a 50–50 percent formula, rather than 75–25 percent.

Let me point out that Indianapolis is a city that is in this group. I might suggest that Indianapolis did not qualify last year when the bill was submitted. Louisville did not qualify last year. Cincinnati did not qualify last year until that proposal was advanced on the floor to include these airports in the formula.

There was a tremendous hue and cry at that time from all over the United States. By the way, last year, when the bill was being considered, if this change had not been made, I would not now be reading to the Senate a list of 22 or 24 airports, but would be reading a list of closer to 50 airports that would have been eliminated.

Mr. President, I recall very vividly talking with the Senator from Florida. He told me that not only would Miami be eliminated, but also Jacksonville, Tampa, and one other airport in his State—I think Fort Lauderdale—would be eliminated.

I might suggest that the present situation is much better than a year ago.

I would also say that there is no reason to establish a trust and then preempt the tax field as a result of that trust and say that one formula applies to the majority of the airports in the United States and another formula applies to some 24 airports in the United States.

Mr. President, how much time do I have remaining?

Mr. PEARSON. Mr. President, I wonder if the manager of the bill would yield me 2 minutes.

The PRESIDING OFFICER. The Senator from Kentucky has 2 left of his 5, and a total of 24.

Mr. COOK. Well, we have 1 hour on this amendment. I would give the Senator all the time he wants.

Mr. CANNON. Mr. President, I yield 5 minutes to the Senator from Kansas.

Mr. PEARSON. Mr. President, I rise to speak in opposition to the amendment of the distinguished Senator from Kentucky.

One really needs to go back to the initial purposes of the hearings which gave birth to this particular bill. Those hearings addressed themselves to a situation whereby community after community and city after city, were either imposing or beginning to impose a so-called head tax upon passengers who would embark or depart from aircraft.

This was really most inconsistent with the original intents and purposes of the trust fund concept as passed some years ago. The havoc that would have resulted in the airports of this country as the different kinds of head taxes were imposed for different purposes and in different amounts, as well as all the congestion and traffic that would have been imposed, led the committee to judge that there should be a prohibition against head taxes such as this.

But that was not enough. It did not really tell the whole story, because some recognition had to be given to the financial plight of many cities, including problems of law enforcement, crime and violence protection, education, and sanitation. All those areas had a greater de-

mand upon the resources, limited as they were, of the cities.

So, Mr. President, I do not think it was enough for the committee just to say, "No, you cannot impose these head taxes." I think we should have gone further, and said, "Real moneys are needed." It was against that background that the committee went on to provide for a greater percentage in the building of airports.

Let me say to the distinguished Senator who finds himself in opposition to the formula, that the great hubs did have, in the bargaining process, real advantages, as pointed out by the manager of the bill: 50–50 on terminals and baggage facilities, which was in the bill many years ago but was stricken out, and which the great hubs have tried desperately to obtain. In addition, 82 percent for safety and security was provided, helping to relieve a great burden upon airports.

So I think under this trust fund concept, if we follow the underlying purpose of all trusts, to provide for discretion and to put money where money needs to be provided, I think this bill is eminently fair, even to the hub airports, and is a bill we ought to go forward with if we are to fulfill our mission and promise to do something in the next decade about this country's aviation, something which will bear the great burden of the transportation of passengers, and which for various reasons is now undergoing particularly difficult times.

So, Mr. President, I respectfully say that I understand the good intentions of the Senator from Kentucky, and I find some of his arguments persuasive, but I do hope the Senate will reject his amendment, and I thank the manager of the bill for yielding time.

The PRESIDING OFFICER. Who yields time?

Mr. COOK. Mr. President, I yield myself 5 minutes for the purpose—and I think it is important—for a reading of the record which should include the list of airports that were intended to be left out of this bill last year. I think it is important to understand what the original intent of the majority of the committee was to do to the airports of the United States, leaving the following airports on a 50–50 basis rather than a 75–25.

This list is very interesting, because this is a list as to which the chairman said a year ago that there were no complaints from anyone in the United States that they were being left on a 50–50 basis leaving the other airports on a 75–25 basis. I read from the committee report the list of airports that were intended to be left out of this act last year, and the airports that a majority of the Aviation Subcommittee and the full Commerce Committee intended to leave off of the 75–25 participation: Birmingham, Ala.; Phoenix and Tucson, Ariz.; Los Angeles, Sacramento, San Diego, and San Francisco, in California; Denver, Colo.; Bradley, Conn.

By the way, the committee did not know that the U.S. Government was paying for the cost of Dulles and Washington National, because they are both listed on this list. Under District of Columbia are listed Dulles International and Washington National. So, at least last year, they did not know they were taken care of by the Federal Government.

In Florida, the following airports would have been left out: Jacksonville, Fort Lauderdale, Miami, Orlando, and Tampa; Georgia, Atlanta; Hawaii, Honolulu, and then there are two others I cannot pronounce. I will give them to the reporter for the RECORD. (Kahului and Lihue.)

O'Hare in Illinois; Indianapolis, Ind.; Des Moines, Iowa; Louisville, Ky.; New Orleans in Louisiana, Friendship in Maryland, Logan in Massachusetts.

Detroit, Minneapolis-St. Paul; In Missouri, Kansas City and St. Louis.

In Nebraska, Omaha.

In Nevada, Las Vegas and Reno; Newark, N.J.; Albuquerque, N. Mex.

In New York: Albany, Buffalo, John F. Kennedy, LaGuardia, Rochester, and Syracuse.

In North Carolina, Charlotte and Raleigh-Durham.

The Cincinnati airport is listed in Ohio whereas it is actually located in the Commonwealth of Kentucky whereas it should have been listed in Kentucky. Also in Ohio: Cleveland, Columbus, and Dayton.

In Oklahoma, Oklahoma City and Tulsa.

In Oregon, Portland.

In Pennsylvania, Philadelphia and Pittsburgh.

In Rhode Island, Providence; Memphis and Nashville, Tenn.

In Texas, Dallas, El Paso, Houston, and San Antonio; Salt Lake City, Utah; Norfolk, Va.

In Washington, Seattle-Tacoma and Spokane; and in Wisconsin, Milwaukee.

Last year, if we had not gotten the 1 percent, every one of those airports I just named would have been eliminated from participation in the 75–25 percent ratio of funds. Many of those have been removed, because we at least won that much of the argument last year which, in effect, knocks a hole in the argument that we only wanted to leave the hubs out, because last year they wanted to leave 65 airports out, Mr. President.

So I can only say that the equity of the thing is there, and the specious argument—I apologize for the word—that one only includes the larger hubs to be eliminated is totally destroyed, because last year they wanted to leave every airport out of that consideration that I have just listed for the Senate.

Mr. President, this is no more than equity. My State does not even have an airport on this list. But I contend that as legislators, when we create a trust and we say that this trust will be the only basis by which major advances in airport technology and airport equipment will be acquired, and then top it off by making a division within that trust, then I say by similar logic we should make a division in the highway trust next time. Maybe we should make a division in other trusts that we create in general, so that we make one class of citizens out of one particular group of communities, and another class of citizens out of another group.

I might say that we also, in preempting the field, have said to those larger airports that "There will be no source at the local level for you to raise taxes; when we leave you at 50–50, you cannot have a head tax," because we felt that it was necessary to do it that way. Maybe if we, as a committee, had spent a little more time, we would have left the dollar on, and done it as a matter of Federal law, so that we would have enough money in the entire program to include every airport.

Philadelphia is having its problems with the seat tax problems, and the answer is very simple: They are having them because it is not payable at the counter. It is payable because the local agency has to set up those fees. And when you pay once, you have to pay again. It is a very irritating thing, and I do not blame the passengers. It is irritating, and it should be.

But what have we done to solve that problem? Philadelphia is going to stay on 50–50 and Philadelphia will be preempted from having its seat tax. So have we solved the problem with this bill in its present form? I can only say that this amendment is not a cry of anguish but a cry for equity. We are legislators, to say that we are establishing a trust for the benefit of air facilities throughout the United States, and yet we have said that the following will be eliminated.

The PRESIDING OFFICER (Mr. DOMENICI). The time of the Senator from Kentucky has expired.

Mr. COOK. I yield myself 2 more minutes.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 2 additional minutes.

Mr. COOK. Mr. President, Phoenix is now on a 50–50 basis. Because it is below 1 percentum, it will go to 75–25. It is, I think, on .98 percentum, and all it has to do is raise it two-tenths of a point and it is back to 50–50.

Let us take Tampa, Fla. It is sitting on 95. Yet it is not in this list. Yet in the record it is sitting on .95. Therefore they are not sitting down there complaining right now because their thinking is based on the idea we are included in the 75–25. At least, they have been told that. So we do not have to worry about it. But all they have to do is go up one-half of 1 percent and they are back to 50–50. See whether that would bother them or not.

Here is one at 96, which is Friendship, at Baltimore. Baltimore is sitting back saying, "We do not have to worry because we are 75–25 under the bill." Yet all they have to do is go up four-tenths of 1 percent and they are back to 50–50. You know, Mr. President, the Chamber of Commerce in Baltimore is trying to sell every group in the city of Baltimore on the idea that they will increase their air transportation. They will have a better chance when they increase it above 1 percent or they will go back to the 50–50 Federal contribution rather than 75–25.

Here is Portland, Oreg., with 81 percent. It might get a little profit this year if it gets close to the 100 points.

Memphis, Tenn., is sitting on .94. All it has to do is go up one six-tenths of 1 percent and it will be back to 50–50. They are thinking everything is fine because they are going to be included in the 75–25 rather than the 50–50, yet it will take a very little change in the percentage of passengers and they will be over the 1 percent.

I can only say, there may not presently be a hue and cry among the airports in the United States, but they should know what could really happen to them in the future.

The PRESIDING OFFICER. The time of the Senator from Kentucky has expired.

Mr. COOK. I reserve the remainder of my time.

Mr. CANNON. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized for 2 minutes.

Mr. CANNON. Listening to the Senator from Kentucky is rather amusing. I would describe his references as "but-if" legislation—"But-if" we had passed the legislation that we considered at one time last year, "but-if" we had done something else, "but-if" we had done something else again, we would have had a different result.

The fact is, Mr. President, we passed this bill last year. We passed it in the Senate and it was passed in the House. It was sent to the White House and it was vetoed.

The formula is the same as that in the bill last year when it passed the Senate and passed by an overwhelming vote. It is the same formula we considered in committee, when it came before us this year.

The Senator referred to the fact that we are depriving the large hubs of an opportunity to impose head taxes to raise the needed revenues. Only one of the large hubs has imposed a head tax, so far. That is Philadelphia. The Philadelphia airport operates at a profit. Last year it turned back over $2 million to the city. Do we want to increase the formula so that Philadelphia can turn around and support other phases of government with airport revenues?

Mr. PEARSON. Mr. President, will the Senator from Nevada yield?

Mr. CANNON. I yield.

Mr. PEARSON. I understand, but I also understand that funds for the Philadelphia Airport are going back into the general revenues of the cities to provide for expenses that may be needed in new fields of municipal endeavor.

Mr. CANNON. That is entirely unrelated to airport operation.

Mr. COOK. Mr. President, will the Senator from Nevada yield?

Mr. CANNON. I will when I finish my statement. I want to finish my statement on the "but-if" legislation.

Mr. President, it has been stated that Baltimore and other airports would go back to the 50–50 formula. They have never been above the 50–50 formula. None has ever been at 75–25 at all. At the time these airports made all of these very fine improvements, they were enjoying the 50–50 formula. That is exactly where they would stay. What we are trying to do is to make it possible for the medium hubs, the small hubs and nonhubs that could not even come up with 50 percent to make airport improvements by providing the 75–25 formula so that they can improve air transportation all over the country.

Now I am glad to yield to my colleague from Kentucky.

Mr. COOK. The question I want to ask the Senator on the "but-if" basis is, How many airports does the Senator and the committee know, below the 24 airports we have listed, that will be listed, that are not operating at a profit? How many small airports does the Senator have any knowledge of that are or are not making money, or do or do not turn back money to the local governments? The point is, we have not picked out a formula, Mr. President, that has said that because of the financial means of the airport, "We have picked an arbitrary percentage and if you go up one point or more, then you will be 50–50, but if you are one point or less, you are on 75–25." But that is no basis to say that we know that every one of the 500 some odd airports are or are not making a profit.

Could the Senator take a look at my own Louisville Airport and tell me——

Mr. CANNON. If the Senator does not know, then I do not know.

Mr. COOK. How about Cincinnati? The Senator from Nevada is the manager of this bill, but if we have this formula, apparently none of the other airports will survive.

Mr. CANNON. Mr. O. L. Sands—who appeared as a witness before our committee last year, is the manager of the New Orleans Airport—pointed up the problem very well, as he was appearing and testifying for the Airport Operators Council. Mr. Sands said that the problem at the medium and small airports was that they cannot come up with their matching money and if we were to raise the formula, they would be able to go ahead with various types of projects.

I cannot tell you, Mr. President, the exact number of the 531 airline airports that we are talking about which are profitable, but I would say that we would be very fortunate if we found 30 or 40 making a profit, other than the large hubs, because they simply do not have the capability for this. This is the reason many airports started to go to the head-tax formula. The Senator says we want to prohibit them.

Thank you, Mr. President.

The PRESIDING OFFICER. Who yields time?

Mr. COOK. Mr. President, I yield myself 5 minutes and then I shall conclude.

The PRESIDING OFFICER. The Senator from Kentucky is recognized for 5 minutes.

Mr. COOK. Mr. President, I have listened to the discussion that we are going to take care of all airports that cannot take care of themselves. I would like to know that they are making a profit and turning the money back. Maybe Philadelphia is fortunate, may I say to the Senator from Kansas (Mr. PEARSON). Maybe it is fortunate. But I have a notion that many airports are not turning back funds because they do not have the opportunity to turn back funds and are promptly bonded. Yet we have this evidence on this record that all the airports included in the 75–25 formula are, in fact, all losing money, that they cannot conceivably file for applications because they cannot qualify.

So, therefore, that is the arugment of saying, "Where are the ones that make money and the ones that do not." When we cannot prove what they have said, that is a rather strange and weak argument. I can only say that we are looking at the situation where we are building a formula into the law, a formula that, when we go above it, we will go back to the 50–50. If we stay below, that will be the 75–25. If we go above it, we might even say, "We will not take in that airport service," or "we will not take in the additional line of Deltas" or "we will not take in the Continentals" because "that will put us over the 1 percent." We all say that this is what we are going to do, but we will not be able to afford it. We will bond them up to the hilt now and we will revert back to 50–50. The fact that Friendship Airport is on a 50–50 basis and that will not go back because it has never been in that range is no basis for a logical argument.

The bill as it was originally passed by this body and is the law today has a uniform standard for every airport in the United States, and that standard is 50–50. We are deviating now. We are deviating from that 50–50 formula, and we are now going to 75–25 for those above 1 percent and 50–50 for those who are fortunate enough not to have enough growth and not to have enough airplanes going in and out of their airports so that they can go to 75–25.

Mr. President, air terminals are the biggest problem to the individual airplane traveler. These airports which are excluded by this bill have the most traffic and the most problems, and they come up with some of the most disastrous accidents of any airports in the United States.

Mr. PEARSON. Mr. President, will the Senator yield?

Mr. COOK. I yield.

Mr. PEARSON. Now I think the Senator is really touching on a point in this debate that has not been emphasized enough. Now the large hubs are going to get the kind of help they precisely need. They need help in safety and security, and they get 82 percent of the funds expended for that purpose. They desperately need help for terminal facilities, and they are going to get 50–50 for the first time in many years. The original act had some terminal facilities, but these are for services related to passengers.

I think the real reason why calls have not been received from the great hubs is that these provisions of the act are doing precisely what they need to do now.

I do not think I am going to persuade the Senator to abandon his amendment, but I think what we have done meets the needs of the great hubs; and I imagine there will not be a large hub in this country that will not apply for some sort of Federal aid for terminal facilities—if

this bill is passed—within the next year. This is the balancing factor.

Mr. COOK. I say to the Senator from Kansas that I am more concerned about the danger the passenger puts up with when an airplane is coming across the runway and another plane is taking off. For these purposes there is no 82-percent money in this bill for that.

We are talking about the facilities that deal with the safety and protection of the passenger on the airplane when it is going up and when it is coming down. As to the terminal facilities with respect to luggage, so that we can expedite the movement of the passenger through the terminal, we have already been through that. The Senator's remarks about that are absolutely correct, and I cannot argue with them. But I would like him to try to convince all those people on the airplane that was going out of Chicago the other day when it hit the tail of another plane. I am sure that a passenger would be delighted to get his luggage in and out of that terminal in an expeditious manner, but I know he is more interested in safety.

Mr. CANNON. Is the Senator suggesting that there was some safety feature that was not installed because the airport was only getting 50–50 matching funds?

Mr. COOK. I do not know that, and I do not think the Senator from Nevada knows whether or not that is true; because we would have to go back and see every application that O'Hare has filed for every application that has been approved and for every application they could not make because they did not have the matching funds. So I cannot say whether I am correct or incorrect. I can only say that the passenger is interested in his safety in getting off the ground, into the air, and getting back.

I do not disagree with the Senator from Kansas, but I can say that this is not what this Airport Act was originally designed to do, and it is not what this original trust was created for.

Mr. President, I will ask for a rollcall vote on my amendment.

I suggest the absence of a quorum.

The PRESIDING OFFICER. On whose time?

Mr. COOK. On my time.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the pending amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, and on final passage.

The yeas and nays were ordered on passage.

Mr. CANNON. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. CANNON. Has all time in favor of the amendment expired?

The PRESIDING OFFICER. It has.

Mr. CANNON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on agreeing to the amendment. The yeas and nays have been ordered, and the clerk will call the roll.

The legistlative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Colorado (Mr. HASKELL), the Senator from Minnesota (Mr. MONDALE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON) and the Senator from Indiana (Mr. BAYH) would vote "nay."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senators from New York (Mr. BUCKLEY and Mr. JAVITS), the Senator from Hawaii (Mr. FONG), and the Senator from Florida (Mr. GURNEY) are necessarily absent.

The Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Florida (Mr. GURNEY), and the Senator from New York (Mr. JAVITS) would vote "yea."

The result was announced—yeas 25, nays 54, as follows:

[No. 8 Leg.]

YEAS—25

Baker	Griffin	Stevenson
Bennett	Hart	Symington
Brock	Huddleston	Talmadge
Case	Long	Tower
Chiles	Nunn	Tunney
Cook	Percy	Weicker
Eagleton	Schweiker	Williams
Fannin	Scott, Pa.	
Goldwater	Stevens	

NAYS—54

Abourezk	Ervin	Metcalf
Aiken	Gravel	Montoya
Allen	Hansen	Moss
Bartlett	Hartke	Muskie
Beall	Hatfield	Nelson
Bentsen	Hathaway	Packwood
Bible	Hollings	Pastore
Biden	Hruska	Pearson
Burdick	Hughes	Pell
Byrd, Harry F., Jr.	Humphrey	Proxmire
	Inouye	Randolph
Byrd, Robert C.	Jackson	Roth
Cannon	Kennedy	Scott, Va.
Clark	Mansfield	Sparkman
Cotton	McClellan	Taft
Curtis	McClure	Thurmond
Dole	McGee	Young
Domenici	McGovern	
Dominick	McIntyre	

NOT VOTING—21

Bayh	Fong	Magnuson
Bellmon	Fulbright	Mathias
Brooke	Gurney	Mondale
Buckley	Haskell	Ribicoff
Church	Helms	Saxbe
Cranston	Javits	Stafford
Eastland	Johnston	Stennis

So Mr. COOK's amendment was rejected.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. PASTORE. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. KENNEDY. Mr. President, I send to the desk an amendment on behalf of Senator BROOKE and myself and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk proceeded to state the amendment.

Mr. KENNEDY. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment reads:

SEC. 4 Section 16(c) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1716(c)), is amended by adding subsection (5):

No airport development project for Logan International Airport at Boston, Massachusetts may be approved by the Secretary unless (1) the project is consistent with a master plan under development in accordance with standards established by the Secretary for airport master plans and (2) is approved by the Secretary.

Mr. KENNEDY. Mr. President, I submit this amendment on behalf of myself and my distinguished junior colleague (Mr. BROOKE), and also with the understanding, concurrence, and support of the two Representatives who will be affected by the amendment: Mr. MOAKLEY and Mr. O'NEILL.

The amendment itself, Mr. President, as the floor manager of the bill understands, affects only Logan International Airport, in Boston, Mass. This amendment is offered and hopefully will be considered by the manager of the bill in connection with the development of a master plan for Logan Airport before expenditure of funds under this legislation.

Over recent years, there has been a continuing struggle between the Massachusetts Port Authority in Boston and the local surrounding communities, in Winthrop, Revere, and East Boston, regarding airport expansion plans. It has been the hope of those of us in the Senate, Mr. BROOKE and myself, and I speak also for the mayor of the city of Boston as well as the Governor of Massachusetts, that a master plan be developed for land use, including recreational sites and buffer zones as well as other considerations important to Logan's neighbors, before any massive expenditure of Federal funds for airport development projects which might adversely affect the communities around Logan.

This has been a problem that we in Congress have been working on—with little results, I might add—for over 5 years. Last year we met with the Secretary of Transportation, and he indicated to us orally, and on radio and television, that he was prepared to insist that a master plan be developed before there be additional Federal expenditures. What we are looking for today is assurance from the chairman of the committee that the commitment of the Secretary of Transportation continues to be the policy of the Department of Transportation.

If it is his understanding that such a commitment exists, then I think we can continue to make progress in Boston in working together on this master plan. I think we need to have in mind the best interests of the people who live in the general area of the airport, and put their interests first.

So I would hope that with this strong indication of the elected officials, Representatives and Senators alike, and the further support of the mayor of the city as well as the Governor of the Commonwealth, that the Members of this body would be aware of our particular situation in Boston. By this amendment, we are not interested in affecting any other airport in the country. What we would require is that there first, before development projects are funded, be a master plan developed for the Logan Airport in Massachusetts, and I would hope that the chairman of the committee would be receptive to the amendment.

Mr. CANNON. Mr. President, I yield myself 1 minute.

I understand that Secretary Volpe made an oral commitment on behalf of the Department to withhold airport grant funds for the Logan International Airport until a long range master plan has been approved. I understand he made that policy commitment in a personal meeting in Senator Kennedy's office. After checking with the Department's General Counsel this afternoon, I am advised that the policy enunciated by Secretary Volpe still stands even though it has never been laid down in written form.

Therefore, I see no need to pursue this amendment, as the matter has already been dealt with and decided administratively.

Mr. KENNEDY. With the assurance of the chairman of the committee that this is his understanding of the policy, of the Department of Transportation then, I am willing to withdraw the amendment. I do it on the basis of this assurance.

I think this matter is extremely important. I think it is essential that such a master plan be developed before Federal funding of development projects moves ahead. Secretary Volpe has given us that commitment. With the further assurance that it is the understanding of the chairman of the committee that this is still the policy of the Department of Transportation, I am willing to withdraw the amendment.

The PRESIDING OFFICER. The amendment is withdrawn. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

Mr. HARTKE. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HARTKE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE's amendment is as follows:

On page 6, line 25, following the word "levied" strike the words "and collected".

Mr. HARTKE. Mr. President, the bill before us today is a poignant example of the trouble which now besets American aviation. Years ago Congress provided for the financing of a nationwide system of roads but it is only recently that the Airport and Airway Development Fund was created.

That fund has yet to reach its full potential and when it does there is some doubt that it will be adequate to meet the aviation needs of this Nation. Airports throughout the country are in a financial bind. They need funds for capital construction to meet the ever-expanding number of flights and the ever-increasing size of airplanes.

Local airports need funds badly. They need money to expand and improve runways, build towers, buy safety equipment, improve security, and operate their facilities. To the extent that the bill before us today increases the Federal share of airport assistance for small- and medium-size airports from 50 percent to 75 percent it is a welcome piece of legislation.

Nevertheless, S. 38 uses the carrot-and-stick approach. It says that you can have a greater percentage of Federal funds but you cannot raise any local funds from a head tax. What alternatives does an airport have?

Smaller airports such as several in the State of Indiana must secure their funds from property taxes. Each of us knows the burden which property owners throughout the Nation must bear in real estate taxes. Taxpayers' revolts in community after community will attest to the fact that people are becoming fed up with taxes which are driving them from their homes.

Mr. President, those portions of S. 38 which deal with State taxation of air commerce are before us today because of a lawsuit which involved the Evansville-Vanderburgh Airport. That airport handles more than 329,000 passengers each year. It serves not only Vanderburgh County but 40 other counties in the surrounding area. To ask the residents of Vanderburgh County to bear through the property tax the burden of operating a rapidly expanding airport which serves 40 other counties is to place an unfair and unjust burden on the property owners in Vanderburgh County.

Mr. President, S. 38 is the successor to S. 3755 which passed the Senate overwhelmingly during the last session. The size of that vote is a recognition of the fact that head taxes are a hindrance to air commerce. But the provisions of S. 38 do not provide an adequate substitute. For many airports it will be meaningless to raise the Federal share from 50 to 75 percent because they do not have the funds available to raise the 25-percent local share. For this reason I intend to offer later in this session, legislation which will revamp the financing of airports and the financing of the Nation's aviation system as a whole.

One of the changes which is made in S. 38 which was not contained in S. 3755 last year, is that those airport operating authorities which levied and collected head taxes prior to May 21, 1970, are exempt from the prohibitions until July 1, 1973. While I support the intent of this amendment I am offering an amendment today which would modify the wording of that provision to extend the exemption to those airport authorities which levied such a tax prior to May 21, 1970, but may not have collected such a tax prior to that date. Included in the airports which would be affected by this modification is Dress Memorial Airport in Evansville, Ind. The head tax was originally levied in 1968 in Evansville but was not collected because the airlines operating from that airport secured an injunction enjoining the collection of the head tax. That case was appealed to the Supreme Court of the United States and the Court ruled that such a tax could be collected. The city of Evansville currently has a claim against the airlines for the amount of revenue lost because of the failure to collect the head tax. The claim is approximately $450,000. If Evansville cannot collect this tax the continued operation of the airport is in jeopardy. Indiana is one of four States that does not receive any State assistance in the operation of its airport and the loss of revenue because of its inability to collect the head tax has and continues to cause financial hardship for the city of Evansville and Vandenburgh County. It is for this reason that the modification I offer to the pending bill is so necessary.

Mr. CANNON. Mr. President, I yield myself 30 seconds.

I understand this amendment would apply only to Evansville, Ind., and would not permit that head tax to stand beyond July 1. It is doubtful whether the pending bill will become law before July 1. This amendment would put Evansville on a par with New Hampshire; therefore, I am willing to accept the amendment.

Mr. COOK. Mr. President, will the Senator yield for the purpose of inquiry?

Mr. CANNON. I yield.

Mr. COOK. As I understand the amendment, it would provide that on page 6, at the bottom of the page, where the language now reads "which levied and collected a tax," the Senator would leave it on the basis of having levied this tax and not collected it?

Mr. HARTKE. That is technically correct.

Mr. COOK. Because, as I understand the significance of it, Evansville's suit was combined with that of the State of New Hampshire, but the city of Evansville did not have its injunction lifted so that it could proceed to collect the tax until a later date; is that right?

Mr. HARTKE. That is right. The tax

could not be collected until the Supreme Court acted. The Supreme Court dissolved the injunction and they have collected the tax from that day forward. They have instituted suit for back collection from the airlines.

Mr. COOK. Is it the intention of Evansville to proceed with its suit against the airlines for collection from the time of the imposition of the tax until the Supreme Court ruled out the injunction?

Mr. HARTKE. A motion is pending at the present time.

Mr. COOK. Would it make any difference in this bill, for all intents and purposes, even if we did change the wording so that the lawsuit could lie against the respective airlines? I do not see how we could do that in this bill. I am not sure we could affect that lawsuit, anyway.

Mr. HARTKE. I do not think it would have any effect upon the lawsuit. All it does is provide a simple remedy for the situation. The manager has indicated that it would be moot by the time the bill is passed.

Mr. COOK. I thank the Senator.

The PRESIDING OFFICER. Do Senators yield back their remaining time?

Mr. CANNON. I yield back my time.

Mr. HARTKE. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Indiana (Mr. HARTKE).

The amendment was agreed to.

Mr. HARTKE. Mr. President, I send another amendment to the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

Mr. HARTKE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARTKE's amendment is as follows:

At the end of the bill insert a new section as follows:

SEC. 9. (a) It is the sense of the Congress that no part of any sums authorized to be appropriated or appropriated for expenditure pursuant to the provisions of this act shall be subject to impoundment from obligation, for purposes as provided in this act, by any officer or employee in the executive branch of government.

(b) For purposes of this act impoundment includes (1) withholding or delaying the expenditure or obligation of funds (whether by establishing reserves or otherwise) appropriated or otherwise obligated for projects or activities, and the termination of authorized projects or activities for which appropriations have been made, and (2) any type of executive action which effectively precludes the obligation or expenditure of the appropriated funds.

Mr. HARTKE. Mr. President, my amendment would provide a stop-gap measure to prevent the President from impounding any funds under this act. By stop-gap I mean a measure that would apply to those bills that pass the Senate before the able Senator from North Carolina, SAM ERVIN, and the other distinguished members of the Committee on Government Operations are able to report the Ervin bill with its more extensive and much needed prohibitions and procedures for notifying the Congress if and when the President does impound funds in this bill. The language of this amendment is a synthesis of similar language in the Highway Trust Fund Act, which has been the subject of a suit brought by most of the committee chairmen in the Senate to release those funds in that act impounded by the President, and language in the Ervin bill. This amendment would guarantee that the moneys authorized in this bill will be spent as mandated by the Congress and also provide standing if a suit need be brought to compel the President to spend these moneys. That, in essence, is the full content of the amendment. Mr. President, I urge adoption of the amendment.

Mr. CANNON. Mr. President, I yield myself 1 minute. I think this is a good amendment. We in the Senate have expressed ourselves, certainly a majority of us, as being against the impoundment of funds. I know of no instance where the President has impounded aviation trust funds, but in view of the action that he has already taken in other areas, I would want to make it clear that we believe that no impounding should take place, and therefore I am willing to accept the amendment.

Mr. DOMINICK. Mr. President, will the chairman yield for a question, and some time?

Mr. CANNON. I am happy to yield to the Senator from Colorado.

Mr. DOMINICK. I would like to get 2 or 3 minutes, if I can.

This seems to me to be a major amendment to the bill. It is the first time I know of in a bill of this kind where we have tried to say what the President can and cannot do if funds are impounded later, which they have not been.

In order to try to get through, which I am, an Airport and Airways Development Act, it does not seem very politic to me to spit right in the eye of the President by putting in this provision. If we are looking for a veto, that is another thing. We may get it, anyhow. But this will add to the chances of it. The point I am making here is, what are the terms of the amendment? The amendment was not read. I thought it was a simple one, like Evansville, but it is not printed and I do not know whether it affects any other act, or that we are talking about this act. How could we say in an authorization bill that the money has to be spent when the money has not even been appropriated?

Mr. CANNON. I would say that this is not a mandatory requirement prohibiting the impoundment of funds. This a sense of Congress provision, that no part of any sums authorized to be appropriated or appropriated for expenditure pursuant to the provisions of this act shall be subject to impoundment by any officer or employee in the executive branch of the Government.

It is a sense of Congress amendment, not an absolute prohibition.

Mr. DOMINICK. I have great respect for the distinguished Senator from Nevada, but where does this say "sense of Congress"?

Mr. CANNON. Just as I read it, "Section 9(a). It is the sense of the Congress that no part of any sums authorized * * *."

Mr. DOMINICK. Fine.

As I say, I do not have the amendment in front of me so I do not know what it says. That cures that problem, but not the basic one, which is, why should we go for this on this bill? The President has already vetoed one with $350 million in it, and this is $420 million. We are already reviewing the problem so that we can get it into operation. If we can tell the President what he can or what he cannot do, we will have more problems.

We remember when we tried to get the Secretary of Defense McNamara to spend money which authorized the appropriations for the bombers, and for 3 years we could not get him to do it. I did not hear any protestations, any great furor, any huffing and puffing from my colleagues on that point. All I heard was that he had the right he had. Maybe he did. I raised this questtion over and over again in committee and on the floor of the Senate, whether he had the right to do it. Everybody thought that he did. OK, that is all right. If he had the right to do it then, I do not know why he does not have the right to do it now.

Mr. HARTKE. Inasmuch as the Senator from Colorado is so concerned, I will be glad to explain the amendment again. What it does provide for is a notification by Congress that if any part of the trust funds are not expended—that Congress should be alerted to that proposition—this language is in accord with that of the Ervin bill and in accord with language in the Highway Trust Fund already passed by the Senate. All we are trying to provide for is an orderly procedure for Congress to know what is not going to be done, and also what is going to be done, with the appropriated and authorized funds of Congress.

Mr. DOMINICK. I now have the Senator's amendment in my hand but it does not say anything about it. All it says is, "no part of any funds authorized to be appropriated" and so forth, shall be impounded from obligation. It does not say anything about notice to Congress or advance notice. All it does is make a flat prohibition. So far as a sense of Congress is concerned, I really think that an amendment of this scope in the bill will guarantee a veto. Maybe the Senator wants to do that, but I do not.

Mr. COTTON. Mr. President, will the Senator from Kentucky yield me 3 minutes?

The PRESIDING OFFICER (Mr. DOMENICI). The Senator from Kentucky has no time for that.

Mr. CANNON. Mr. President, I yield to the Senator such 3 minutes.

The PRESIDING OFFICER. The Senator from New Hampshire is recognized for 3 minutes.

Mr. COTTON. Mr. President, if I am not mistaken, there has been no question yet about the President's impoundment of any funds appropriated from the Airport and Airway Trust Fund.

As a matter of fact, the word "impoundment" used with respect to what the President has done in relation to certain appropriations, is a somewhat misleading term. It creates the impression that he has the money and is hoard-

ing it. Actually, the impoundment of funds has come to mean the borrowing of money and if we do that, we will exceed the debt ceiling set by the Congress. We have every expectation that we will come to grips with this issue sooner or later, as everybody knows on both sides of this question of so-called "impoundment" of appropriations by the President.

But, to write this into a bill amending an appropriation authorization which deals with a trust fund in which there has not been enough money in the past and we have had to appropriate funds from general revenues when the spending authority was lower than now proposed in S. 38, seems to me to be the height of improvidence.

I say this because if anyone in this Senate is really interested in moving forward with airports and airway development, then he should not raise an artificial barrier such as the pending amendment, which can only serve to invite a veto, unless it is purely for the purpose of inviting such a veto and seeking to override the President.

Therefore, it seems to me that this is an unwise provision from the standpoint of those who do not wish to let the President withhold spending. In this particular case, it is simply not the right bill to come to grips with that question. It also certainly adds to the risk of getting this bill through both Houses of Congress and approved by the President.

Mr. HARTKE. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Eight minutes remain to the Senator from Indiana.

Mr. BAKER. Mr. President, will the Senator from Kentucky yield me 2 minutes?

Mr. COOK. I yield 2 minutes to the Senator from Tennessee.

Mr. BAKER. Mr. President, I do not want unduly to prolong this debate but would like to say that as a lawyer, or as a man who was once a lawyer, in any event, before I came to this body, I am hard put to say what the four corners of this instrument mean.

It is true that the first line of the amendment states, "Section 9(a). It is the sense of the Congress * * *" but this is not a resolution, it is an amendment. As it proceeds down into the body of the amendment, it contains specific declaratory language that provides for a prohibition against the impoundment of funds. I am not at all sure that the term "It is the sense of the Congress" nullifies the specific declaratory language which appears further on in the amendment.

I wonder, as a matter of legislative history, whether the Senator from Indiana (Mr. HARTKE) would give me his idea about what the combination of those two terms means in this respect.

Mr. HARTKE. I am sorry, I did not hear the Senator.

Mr. BAKER. Let me restate it for the Senator. The question I put was, I wondered about the combined effect of the first words, "It is the sense of the Congress" with the matter before us which is not a resolution. It is not a sense-of-Congress resolution but, rather, an amendment. When taken together, the declaratory language further down into the bill specifically prohibits the impoundment of funds. Since I am unsure about the interpretation of the amendment, I ask the Senator expressly as to his understanding of that combination of facts.

Mr. HARTKE. The purpose of the amendment is basically to hold in abeyance any withholding of funds until the procedures have been worked out by Senator ERVIN's committee on the withholding of funds. What we have here is not a mandatory provision. It is simply a sense-of-Congress resolution and, being such, is an indication of what we would like to have done. In the meantime, the committee which Senator ERVIN is chairing is considering either having a notification procedure or some other type of procedure on the withholding of funds.

I repeat that this is similar language to the highway trust fund language already passed by the Senate.

What I am saying, in substance, is that this is a sense of the Senate resolution which says that this is what we believe should be done—to hold in abeyance any type of action until the Government Operations Committee can act. At the same time, it would not prohibit in its entirety the utilization of these funds. It would be an indication that the Senate, itself, would look with difference of opinion on any withholding by the President, if he decided to withhold.

Mr. BAKER. I thank the Senator.

I am sorry to say that I do not arrive at the same meaning from the words of the amendment. I shall vote against it. But I think it is very helpful that the Senator from Indiana, who is the sponsor of the amendment, has clearly stated, as I understand it, that this amendment does not have the force and effect of law by prohibiting the impoundment of funds and, rather, is in the nature of a sense-of-the-Senate resolution.

Mr. HARTKE. In fact, it is a sense of the Senate resolution.

Mr. BAKER. Is it the understanding of the Senator that 9(a) and 9(b) both are sense-of-the-Senate resolution equivalence—both sections?

Mr. HARTKE. Both sections still would be sense-of-the-Senate resolutions.

The PRESIDING OFFICER. Who yields time?

Mr. HARTKE. Mr. President, I yield back the remainder of my time.

Mr. CANNON. I yield back the remainder of my time.

The PRESIDING OFFICER. All time on the amendment has been yielded back. The question is on agreeing to the amendment.

Mr. COTTON. Mr. President, I ask for the yeas and nays on the amendment.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Indiana. On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisania (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Washington (Mr. MAGNUSON), and the Senator from Indiana (Mr. BAYH) would vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senators from New York (Mr. BUCKLEY and Mr. JAVITS), the Senator from Hawaii (Mr. FONG), and the Senator from Florida (Mr. GURNEY) are necessarily absent.

The Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), and the Senator from New York (Mr. JAVITS) would each vote "yea."

The result was announced—yeas 50, nays 30, as follows:

[No. 9 Leg.]

YEAS—50

Abourezk	Hatfield	Moss
Bentsen	Hathaway	Muskie
Bible	Hollings	Nelson
Biden	Huddleston	Nunn
Burdick	Hughes	Packwood
Byrd, Robert C.	Humphrey	Pastore
Cannon	Inouye	Pell
Case	Jackson	Randolph
Chiles	Kennedy	Schweiker
Clark	Long	Sparkman
Cook	Mansfield	Stevenson
Eagleton	McClellan	Symington
Ervin	McGee	Talmadge
Fulbright	McGovern	Tunney
Gravel	McIntyre	Weicker
Hart	Metcalf	Williams
Hartke	Montoya	

NAYS—30

Aiken	Dole	Proxmire
Allen	Domenici	Roth
Baker	Dominick	Scott, Pa.
Bartlett	Fannin	Scott, Va.
Beall	Goldwater	Stevens
Bennett	Griffin	Taft
Brock	Hansen	Thurmond
Byrd, Harry F., Jr.	Hruska	Tower
	McClure	Young
Cotton	Pearson	
Curtis	Percy	

NOT VOTING—20

Bayh	Fong	Mathias
Bellmon	Gurney	Mondale
Brooke	Haskell	Ribicoff
Buckley	Helms	Saxbe
Church	Javits	Stafford
Cranston	Johnston	Stennis
Eastland	Magnuson	

So Mr. HARTKE'S amendment was agreed to.

Mr. HARTKE. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. GRAVEL. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. McCLURE). The Senator from Nevada is recognized.

Mr. CANNON. Mr. President, as far as I know, there are no other amendments. If there are no other amendments, I am prepared to yield back the remainder of my time.

Mr. COOK. I yield back the remainder of my time.

Mr. CANNON. I yield back the remainder of my time.

The PRESIDING OFFICER. If there be no further amendments to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. DOMINICK. Mr. President, will the Senator yield for just a couple of questions?

The PRESIDING OFFICER. All time has been yielded back. There is no time remaining.

Mr. DOMINICK. There is no time remaining?

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senator from Colorado may be recognized for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMINICK. Mr. President, I do not wish to detain the Senate. I probably will not take the 5 minutes.

I think the Hartke amendment further endangered the possibility of passing this bill, which I think is too bad, as I said earlier.

What I would like to know is: What is the total price tag of the bill as it stands now? Is it the same as passed by the Senate last year?

Mr. CANNON. The price tag is the same as last year.

Mr. DOMINICK. That was $420 million, as I remember.

Mr. CANNON. $420 million total per year for airport grants for 2 years. We increased the minimum authorization to make up the difference between the 50 percent and the 75 percent, so that total investment in airports would not be diminished.

Mr. DOMINICK. The bill the President vetoed as it came from conference had a price tag of only $350 million, did it not?

Mr. CANNON. That is correct.

Mr. DOMINICK. So we are putting in a bill, and the last bill was vetoed because of the price tag, largely, indicating as the President did, that it was a good bill and it was needed to go further, but it was a little expensive under the status of the budget. But we go ahead this way with this amount of money.

Mr. CANNON. The indication, as best I can remember, was that he vetoed it because of the effect on the budget. This bill would have no budgetary impact because all the revenues come out of trust funds. It is my judgment that a proper analysis of the bill would indicate there is no effect on the budget whatever. This spending is covered completely by the trust fund. We will have a $100 million surplus on July 1 of this year in the trust fund.

The total revenues required for this program are to come from trust fund sources.

Mr. DOMINICK. Does this bill also cover terminals?

Mr. CANNON. The bill has the same provisions as last year as to terminals. It makes that portion of the terminal related to the handling of passengers and their baggage eligible for Federal assistance up to 50 percent.

Mr. DOMINICK. This is the first time we have gone into that phase of airport development; is it not?

Mr. CANNON. No, this is not the first time. As a matter of fact, a number of years ago under the Federal Airport Act of 1946 terminal construction was eligible for funding. Then the eligibility was eliminated by amendment but last year the same formula we have today was passed with respect to terminal aid.

Mr. DOMINICK. So this bill is the same as was passed by the Senate last year with the exception of the Hartke amendments?

Mr. CANNON. It is substantially the same. There was a land-bank provision last year which would permit 100 percent initial Federal financing, on a payback basis, for the purpose of acquiring land for future airport development. That provision is not in the bill this year.

Mr. DOMINICK. I thank the Senator.

Mr. RANDOLPH. Mr. President, will the Senator yield?

Mr. CANNON. I yield to the Senator from West Virginia.

The PRESIDING OFFICER. There are 2 minutes remaining.

Mr. RANDOLPH. Has there been an effort made during the debate on the airports and airways bill to take the money that the Congress wisely placed in the trust fund and siphon if off into rail transit?

Mr. CANNON. May I say to my distinguished colleague from West Virginia that there is no provision in the bill to siphon funds off to rail transit, nor is there any provision in the bill for the money to be used for airport access highways or roads.

Mr. RANDOLPH. I hope the same procedure will be followed when we bring the Federal-aid highway bill before the Senate in the near future.

I make these remarks because the Committee on Public Works is developing a new highway bill at a time when there are numerous attacks on the concept by which the resources of the highway trust funds are used exclusively for the improvement of highway transportation. All of the trust funds established by the Congress were designed to accomplish specific ends. To be successful—as the highway trust funds has been successful—there can be no dilution of funds that have been voted by the Congress to a specific and necessary purpose.

Mr. President, I recognize that our country's urban mass transit programs should be adequately financed and that for many years they were relatively neglected. I believe we have moved in recent years to correct many of the deficiencies of the past, and I have supported them with conviction. I do not believe, however, that the cause of better mass transit or the cause of better highway transportation is advanced by permitting the use of highway trust funds to finance the construction of very costly rail transit systems.

The airport and airways trust fund was established to carry out urgently needed improvements to our national system of air facilities. The highway trust fund was created to meet equally urgent needs of another mode of transportation. In each instance, the success of the two programs has justified the course taken by the Congress in providing the mechanisms of financing. In both cases, the needs remain substantial and will require the future income of the trust funds. These programs were based on sound assessments of need. They should not be deviated from meeting these needs. The needs of mass transit are great, but the long-overdue expansion of this transportation mode should be carried out under separate financing.

The legislation before the Senate is concerned with the airport and airways trust fund. I have discussed the highway trust fund during this debate because I believe there are a number of similarities in their operation and in the potential threats to their viability. To those who have been deeply involved in the airport and airways program, I must issue this warning: if one trust fund—be it the highway trust fund or the airport and airways trust fund—is broken and its resources scattered among several programs, then I fear that open season will have been declared on all trust funds. In such a situation, none of the programs the trust funds were intended to further could be properly and adequately carried forward.

Mr. HARRY F. BYRD, JR. Mr. President, I think it is very important to the communities of our Nation that the airports be developed. More and more, air travel is becoming a necessity. It is particularly important to the economic development of smaller and medium-sized communities that there be adequate airport facilities.

The legislation under consideration, the Airport Development Acceleration Act of 1973, provides that the cost of increased Federal participation will be borne by the users of the system, not by the general taxpayer.

I think it is important, Mr. President, that S. 38, the bill under consideration, provides that the increased Federal participation be borne by the users of the system and not by the taxpayer. The airlines, airline passengers and shippers, and aircraft owners and operators all contribute to the development of this system by paying user taxes established in 1970.

This bill also provides that a greater share of the revenues from those taxes would filter down to local governments—airport sponsors—to meet local and national needs. So this bill has a great

deal of merit to it, and a great deal of value to the communities of our States, in developing adequate aviation facilities.

There is one aspect of this legislation that I do not like. I want to mention it because, in voting for S. 38, I do so with the assertion that my vote will not be construed as approving a provision of this bill as a precedent.

The bill authorizes expenditure of $280 million for 3 different years, and $420 million for 2 additional years. The normal way of doing that, is to authorize no more than a certain amount. But the way this legislation is written, it provides for not less than the specified amounts.

That is a departure from the general procedure in authorizing appropriations. If my view could prevail, I would take that out of the bill. But my view cannot prevail in that regard.

I emphasize that this is an authorization bill. It does not appropriate funds. Therefore, while I dislike the setting of minimum levels in an authorization measure, I can support the bill as a whole because of its desirable features.

No general tax revenues will be required to pay for the spending authority established in this legislation. Airports are very important to the welfare, advancement, and development of our Nation; and with that in mind, I shall cast an affirmative vote.

Mr. CANNON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time has been yielded back.

The question is on passage of the bill. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Indiana (Mr. BAYH), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from Colorado (Mr. HASKELL), the Senator from Washington (Mr. MAGNUSON), the Senator from Minnesota (Mr. MONDALE), and the Senator from Connecticut (Mr. RIBICOFF) are necessarily absent.

I further announce that the Senator from Louisiana (Mr. JOHNSTON) is absent on official business.

I also announce that the Senator from Mississippi (Mr. STENNIS) is absent because of illness.

I further announce that, if present and voting, the Senator from Connecticut (Mr. RIBICOFF), the Senator from Colorado (Mr. HASKELL), and the Senator from Washington (Mr. MAGNUSON) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senators from New York (Mr. BUCKLEY and Mr. JAVITS), the Senator from Hawaii (Mr. FONG), and the Senator from Florida (Mr. GURNEY) are necessarily absent.

The Senator from North Carolina (Mr. HELMS), the Senator from Maryland (Mr. MATHIAS), the Senator from Ohio (Mr. SAXBE), and the Senator from Vermont (Mr. STAFFORD) are absent on official business.

If present and voting, the Senator from Massachusetts (Mr. BROOKE), the Senator from Florida (Mr. GURNEY) and the Senator from New York (Mr. JAVITS) would each vote "yea."

The result was announced—yeas 65, nays 15, as follows:

[No. 10 Leg.]

YEAS—65

Abourezk	Fulbright	Montoya
Aiken	Goldwater	Moss
Allen	Gravel	Muskie
Baker	Griffin	Nunn
Beall	Hart	Packwood
Bible	Hartke	Pastore
Biden	Hatfield	Pearson
Burdick	Hathaway	Pell
Byrd, Harry F., Jr.	Hollings	Percy
Byrd, Robert C.	Huddleston	Randolph
Cannon	Hughes	Schweiker
Case	Humphrey	Scott, Pa.
Chiles	Inouye	Sparkman
Clark	Jackson	Stevens
Cook	Kennedy	Stevenson
Cotton	Long	Symington
Dole	Mansfield	Talmadge
Domenici	McClellan	Tower
Dominick	McGee	Tunney
Eagleton	McGovern	Weicker
Ervin	McIntyre	Williams
	Metcalf	Young

NAYS—15

Bartlett	Fannin	Proxmire
Bennett	Hansen	Roth
Bentsen	Hruska	Scott, Va.
Brock	McClure	Taft
Curtis	Nelson	Thurmond

NOT VOTING—20

Bayh	Fong	Mathias
Bellmon	Gurney	Mondale
Brooke	Haskell	Ribicoff
Buckley	Helms	Saxbe
Church	Javits	Stafford
Cranston	Johnston	Stennis
Eastland	Magnuson	

So the bill (S. 38) was passed, as follows:

S. 38

An Act to amend the Airport and Airway Development Act of 1970, as amended, to increase the United States share of allowable project costs under such Act, to amend the Federal Aviation Act of 1958, as as amended, to prohibit certain State taxation of persons in air commerce, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Airport Development Acceleration Act of 1973".

SEC. 2. Section 11(2) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1711), is amended to read as follows:

"(2) 'Airport development' means (A) any work involved in constructing, improving, or repairing a public airport or portion thereof, including the construction, alteration, repair, or acquisition of airport passenger terminal buildings or facilities directly related to the handling of passengers or their baggage at the airport, and (B) the removal, lowering, relocation, marking, and lighting of airport hazards, and (C) the acquisition, removal, improvement, or repair of navigation facilities used by aircraft landing at, or taking off from, a public airport, and (D) the acquisition, improvement, or repair of safety equipment required by rule or regulation for certification of an airport under section 612 of the Federal Aviation Act of 1958, and (E) security equipment required of the sponsor by the Secretary by rule or regulation for the safety and security of persons and property on the airport, and (F) any acquisition of land or of any interest therein or of any easement through or other interest in airspace, which is necessary to permit any of the above or to remove, mitigate, prevent, or limit the establishment of, airport hazards affecting a public airport."

SEC. 3. (a) Section 14(a) of the Airport and Airway Development Act of 1970, as amended (49 U.S.C. 1714(a)), is further amended—

(1) by striking out "1975" in paragraph (1) and inserting in lieu thereof "1973, and $375,000,000 for each of the fiscal years 1974 and 1975"; and

(2) by striking out "1975" in paragraph (2) and inserting in lieu thereof "1973, and $45,000,000 for each of the fiscal years 1974 and 1975".

(b) Section 14(b) of the Act (49 U.S.C. 1714(b)), is amended—

(1) by striking out "$840,000,000" in the first sentence thereof and inserting in lieu thereof "$1,680,000,000";

(2) by striking out the words "extend beyond" in the second sentence thereof and by inserting in lieu thereof, the words "be incurred after"; and

(3) by striking out "and" in the last sentence thereof and inserting immediately before the period ", an aggregate amount exceeding $1,260,000,000 prior to June 30, 1974, and an aggregate amount exceeding $1,680,000,000 prior to June 30, 1975".

SEC. 4. Section 16(c)(1) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1716(c)), is amended by inserting in the last sentence thereof "or the United States or an agency thereof" after "public agency".

SEC. 5. Section 17 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1717), relating to United States share of project costs, is amended—

(1) by striking out subsection (a) of such section and inserting in lieu thereof the following:

"(a) GENERAL PROVISIONS.—Except as otherwise provided in this section, the United States share of allowable project costs payable on account of any approved airport development project submitted under section 16 of this part shall be—

"(1) 50 per centum for sponsors whose airports enplane not less than 1.00 per centum of the total annual passengers enplaned by air carriers certificated by the Civil Aeronautics Board; and

"(2) 75 per centum for sponsors whose airports enplane less than 1.00 per centum of the total annual number of passengers enplaned by air carriers certificated by the Civil Aeronautics Board."

(2) by adding a new subsection as follows:

"(e) SAFETY CERTIFICATION AND SECURITY EQUIPMENT.—

"(1) To the extent that the project cost of an approved project for airport development represents the cost of safety equipment required by rule or regulation for certification of an airport under section 612 of the Federal Aviation Act of 1958 the United States share shall be 82 per centum of the allowable cost thereof with respect to airport development project grant agreements entered into after May 10, 1971.

"(2) To the extent that the project cost of an approved project for airport development represents the cost of security equipment required by the Secretary by rule or regulation, the United States share shall be 82 per centum of the allowable cost thereof with respect to airport development project grant agreements entered into after September 28, 1971."

(3) by adding a new subsection as follows:

"(f) PUBLIC USE FACILITIES IN TERMINAL BUILDINGS.—To the extent that the project cost of an approved project for airport development represents the cost of constructing, altering, repairing, or acquiring buildings or facilities directly related to the handling of passengers or their baggage at the airport, the United States share shall be 50 per centum of the allowable costs thereof."

SEC. 6. Section 20(b) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1720(b)), relating to airport project costs, is amended to read as follows:

"(b) COSTS NOT ALLOWED.—The following

are not allowable project costs: (1) the cost of construction of that part of an airport development project intended for use as a public parking facility for passenger automobiles; or (2) the cost of construction, alteration, repair, or acquisition of a hangar or of any part of an airport building or facility except such of those buildings, parts of buildings, facilities, or activities as are directly related to the safety of persons at the airport or directly related to the handling of passengers or their baggage at the airport."

SEC. 7. (a) Title XI of the Federal Aviation Act of 1958 is amended by adding at the end thereof the following new section:

"STATE TAXATION OF AIR COMMERCE

"SEC. 1113. (a) No State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) shall levy or collect a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom: *Provided, however,* That any State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) which levied a tax, fee, head charge, or other charge, directly or indirectly, on persons traveling in air commerce or on the carriage of persons traveling in air commerce or on the sale of air transportation or on the gross receipts derived therefrom prior to May 21, 1970, shall be exempt from the provisions of this subsection until July 1, 1973.

"(b) Nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) from the levy or collection of taxes other than those enumerated in subsection (a) of this section, including property taxes, net income taxes, franchise taxes, and sales or use taxes on the sale of goods or services; and nothing herein shall prohibit a State (or political subdivision thereof, including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the District of Columbia, the territories or possessions of the United States or political agencies of two or more States) owning or operating an airport from levying or collecting reasonable rental charges, landing fees, and other service charges from aircraft operators for the use of airport facilities.

"(c) In the case of any airport operating authority which—

"(1) has an outstanding obligation to repay a loan or loans of amounts borrowed and expended for airport improvements;

"(2) is collecting, without air carrier assistance, a head tax on passengers in air transportation for the use of its facilities; and

"(3) has no authority to collect any other type of tax to repay such loan or loans, the provisions of subsection (a) shall not apply to such authority until July 1, 1973."

(b) That portion of the table of contents contained in the first section of such Act which appears under the center heading "TITLE XI—MISCELLANEOUS" is amended by adding at the end thereof the following:

"Sec. 1113. State taxation of air commerce.".

SEC. 8. Section 12(a) of the Airport and Airway Development Act of 1970 (49 U.S.C. 1712) is amended by striking out the words "two years" in the first sentence thereof and by inserting in lieu thereof "three years".

SEC. 9. (a) It is the sense of the Congress that no part of any sums authorized to be appropriated or appropriated for expenditure pursuant to the provisions of this Act shall be subject to impoundment from obligation, for purposes as provided in this Act, by any officer or employee in the executive branch of Government.

(b) For purposes of this Act impoundment includes—(1) withholding or delaying the expenditure or obligation of funds (whether by establishing reserves or otherwise) appropriated or otherwise obligated for projects or activities, and the termination of authorized projects or activities for which appropriations have been made, and (2) any type of executive action which effectively precludes the obligation or expenditure of the appropriated funds.

Mr. CANNON. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. MANSFIELD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MANSFIELD. Mr. President, I simply wish to thank the distinguished Senator from Nevada (Mr. CANNON) for the manner in which he steered this most important measure to success. It is an item that ranked high in the priorities of legislation for this Congress and I am pleased that we have now seen it come out of the committee, go through the Senate and proceed on its way to the House and the White House. Senator CANNON is to be congratulated on his excellent handling of this measure.

Joining Senator CANNON was the distinguished Senator from Kentucky (Mr. COOK) whose splendid cooperation and leadership played a large part in the success of this bill. Senator COTTON also deserves our great thanks as does the chairman of the committee, Senator MAGNUSON, for their roles in guiding this bill to early acceptance by the Senate.

LEGISLATIVE PROGRAM

Mr. SCOTT of Pennsylvania. Mr. President, I rise to ask the distinguished majority leader what is the order of the business for the rest of the day up to the time of the recess.

Mr. MANSFIELD. Mr. President, in response to the question raised by the distinguished minority leader, as the Senate knows, we have 2 or 3 hours of eulogies for the late President Truman tomorrow.

Incidentally, I am glad that the Senator has raised this question. It is my understanding that the request that was made today concerning the Ervin resolution has been recorded as a vote to occur on the resolution. If that is the case, to set the record straight and to make it absolutely plain what we were discussing during the day, I would like to change that so that it would read "consideration of the resolution to begin at approximately 4 o'clock."

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. MANSFIELD. Mr. President, we also hope to take up what other items will be reported by the various committees—the Veterans Affairs Committee and the like. We hope it will be possible to start on the Weinberger nomination tomorrow.

There will be no further business this evening. And that is about it.

Mr. SCOTT of Pennsylvania. Mr. President, might I inquire as to what is contemplated regarding the so-called skyjacking bill?

Mr. MANSFIELD. Mr. President, since I talked with the distinguished Republican leader this morning a "hold" has been placed on that bill. And that hold will be honored for a brief but a reasonable length of time.

Mr. SCOTT of Pennsylvania. Mr. President, I hope we can dispose of that measure before the recess, if at all possible. It does seem to me that this is a matter on which human life depends, the arming of the authorities with adequate means to handle a very difficult subject.

So, I hope that the hold will not be held capriciously or for too long a time.

Mr. MANSFIELD. Mr. President, I agree completely with the distinguished minority leader.

ORDER FOR RECOGNITION OF SENATOR PROXMIRE TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that on tomorrow, following the remarks of Mr. HUGHES under the order previously entered the distinguished senior Senator from Wisconsin, (Mr. PROXMIRE) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR TRANSACTION OF ROUTINE MORNING BUSINESS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, following the special orders for the recognition of Senators on tomorrow, that there be a period for the transaction of routine morning business for not to exceed 15 minutes with statements limited therein to 3 minutes.

ORDER FOR ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that, when the Senate completes its business today, it stand in adjournment until 12 o'clock meridian tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE RETIREMENT FROM HIS PASTORATE OF CHAPLAIN ELSON

Mr. HARRY F. BYRD, JR. Mr. President, last Thursday evening nearly 600 religious, political, civic, and military leaders of the Nation's Capital paid tribute to Dr. Edward L. R. Elson and his wife at a dinner in the Statler-Hilton Hotel.

All of us in the Senate know Dr. Elson well. We know that he is an outstanding religious leader. We know that he is an outstanding individual. We know that the prayers with which he opens the Senate each day are moving ones, and that they mean much to the Members of this body.

The testimonial to Dr. Elson this past Thursday marked his retirement as minister of the National Presbyterian Church in our city. I have been tremendously impressed with Dr. Elson since he has been Chaplain of the Senate. He is beloved by Members of this body.

So, on his retirement from his pastorate of the National Presbyterian Church, I salute him, and I wish to record also that I am very pleased that he is not retiring as Chaplain of the Senate of the United States.

THE STATE OF THE UNION

Mr. HARRY F. BYRD, JR. Mr. President, the President of the United States last Friday submitted to Congress his annual report giving to Congress information on the state of the Union. The President's report was a brief one—some 3½ pages. It was different in style from the usual state of the Union address.

I like the content of the President's report to the Congress. He said that the purpose of this first message in a series which he plans to present is to give a concise overview of where we stand as a people today.

During the course of this statement to Congress, the President laid great stress on the need to put a ceiling on Government spending.

I share the President's grave concern in this regard.

Congress, I feel, has not given adequate consideration to the consequences of the heavy deficits which the Federal Government has been running for so many years, particularly in the past few years. For this, the present administration must share its part of the responsibility. But while the present administration seems now to have reached the conclusion that the Federal Government is in grave financial condition which requires a ceiling on expenditures and a reduction in Federal spending, I am not sure that Congress has reached that same conclusion.

The President pointed out in the last paragraph of his State of the Union message that if we are to accomplish what we need to accomplish in getting Federal spending under control, then the Congress and the executive branch must work together. We will not be able to get it under control unless the two branches of Government are willing to work together in this endeavor.

So far as I am concerned, I want to cooperate with President Nixon in seeking a ceiling on Government spending.

I am frank to say that the budget submitted by the President a week ago today, at $269 billion, is too high. It is $19 billion more than it was for the current fiscal year. But there is evidence, I think that on the part of the top men in the present administration there is concern—perhaps alarm—that Federal spending has gotten out of hand. It is a good sign that there is concern and alarm on the part of the top people in the executive branch of the Government.

I am convinced that Federal spending has gotten out of hand, and I am willing to take strong steps, along with the President and with my colleagues, to try to put a ceiling on spending and get the Government's financial house in better order than it is now.

Accordingly, I commend the President's state of the Union message focusing attention on what I consider to be a very grave problem.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, informed the Senate that, pursuant to the provisions of section 8002 of the Internal Revenue Code of 1954, the following members of the Committee on Ways and Means have been designated as members of the Joint Committee on Internal Revenue Taxation: Mr. MILLS of Arkansas, Mr. ULLMAN, Mr. BURKE of Massachusetts, Mr. SCHNEEBELI, and Mr. COLLIER.

The message also informed the Senate that, pursuant to the provisions of 16 United States Code 513, the Speaker had appointed Mr. ICHORD, and Mr. SAYLOR as members of the National Forest Reservation Commission, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 202(b), Public Law 90–259, the Speaker had appointed Mr. DAVIS of Georgia and Mr. PETTIS as members of the National Commission on Fire Prevention and Control, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 1, Public Law 372, 84th Congress, as amended, the Speaker had appointed Mr. THOMPSON of New Jersey, Mr. MURPHY of New York, Mr. GUDE, and Mr. FISH as members of the Franklin Delano Roosevelt Memorial Commission, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 3(a), Public Law 86–380, the Speaker had appointed Mr. FOUNTAIN, Mr. ULLMAN, and Mr. BROWN of Ohio as members of the Advisory Commission on Intergovernmental Relations, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of 44 United States Code 2501, the Speaker had appointed Mr. BRADEMAS as a member of the National Historical Publications Commission, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 1(a), Public Law 89–187, the Speaker had appointed Mr. GRAY, Mr. ZABLOCKI, Mr. RUPPE, and Mr. FROEHLICH as members of the Father Marquette Tercentenary Commission, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 140(g), title 1, Public Law 92–318, the Speaker had appointed Mr. BRADEMAS and Mr. DELLENBACK as members of the National Commission on the Financing of Postsecondary Education, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of 16 United States Code 715a, as amended, the Speaker had appointed Mr. DINGELL and Mr. CONTE as members of the Migratory Bird Conservation Commission, on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 2(a), Public Law 91–332, the Speaker had appointed Mr. FOLEY, Mr. MELCHER, Mr. SAYLOR, and Mr. SKUBITZ as members of the National Parks Centennial Commission, on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 1, Public Resolution 32, 73d Congress, the Speaker had appointed Mrs. SULLIVAN, Mr. ROY, and Mr. CAMP as members of the U.S. Territorial Expansion Memorial Commission on the part of the House.

The message also informed the Senate that, pursuant to the provisions of 10 United States Code 9355(a), the Speaker had appointed Mr. FLYNT, Mr. SIKES, Mr. DAVIS of Wisconsin, and Mr. ARMSTRONG as members of the Board of Visitors to the U.S. Air Force Academy on the part of the House.

The message further informed the Senate that, pursuant to the provisions of 14 United States Code 194(a), the Speaker had appointed Mr. TIERNAN and Mr. STEELE as members of the Board of Visitors to the U.S. Coast Guard Academy on the part of the House.

The message also informed the Senate that, pursuant to the provisions of 46 United States Code 1126c, the Speaker had appointed Mr. WOLFF and Mr. WYDLER as members of the Board of Visitors to the U.S. Merchant Marine Academy on the part of the House.

The message further informed the Senate that, pursuant to the provisions of 10 United States Code 6968(a), the Speaker had appointed Mr. FLOOD, Mr. STRATTON, Mr. RHODES, and Mr. HORTON as members of the Board of Visitors to the U.S. Naval Academy on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 2(b), Public Law 89–491, as amended, the Speaker had appointed Mrs. HANSEN, Mr. BURKE of Massachusetts, Mr. WHITEHURST, and Mr. WILLIAMS as members of the American Revolution Bicentennial Commission on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 602(b), title 6, Public Law 92–352, the Speaker had appointed Mr. ZABLOCKI and Mr. MAILLIARD, on the part of the House, and from private life, Dr. Stanley Wagner, of Oklahoma, and Dr. Arend D. Lubbers, of Michigan, as members of the Commission on the Organization of the Government for the Conduct of Foreign Policy.

The message also informed the Senate that, pursuant to the provisions of section 401(b), title 4, Public Law 91–510, the Speaker had appointed Mr. BROOKS, Mr. GIAIMO, Mr. O'HARA, Mr. CLEVELAND, and Mr. DELLENBACK as members of the Joint Committee on Congressional Operations on the part of the House.

The message further informed the Senate that, pursuant to the provisions of section 10(a), Public Law 474, 81st Con-

gress, the Speaker had appointed Mr. HALEY, Mr. UDALL, and Mr. STEIGER of Arizona as members of the Joint Committee on Navajo-Hopi Indian Administration.

The message also informed the Senate that, pursuant to the provisions of section 201(a), Public Law 92-599, the Speaker had appointed Mr. ULLMAN, Mr. BURKE of Massachusetts, Mrs. GRIFFITHS, Mr. ROSTENKOWSKI, Mr. SCHNEEBELI, Mr. COLLIER, and Mr. BROYHILL of Virginia, of the Committee on Ways and Means, and Mr. MAHON, Mr. WHITTEN, Mr. ROONEY of New York, Mr. SIKES, Mr. CEDERBERG, Mr. RHODES, and Mr. DAVIS of Wisconsin, of the Committee on Appropriations, and Mr. REUSS and Mr. BROYHILL of North Carolina on the part of the House, as members of the Joint Committee to Review Operation of Budget Ceiling and to recommend procedures for improving congressional control over budgetary outlay and receipt totals.

The message further informed the Senate that, pursuant to the provisions of section 5(a), Public Law 87-758, the Speaker had appointed Mr. CARNEY of Ohio and Mr. FREY as members of the National Fisheries Center and Aquarium Advisory Board on the part of the House.

The message also informed the Senate that, pursuant to the provisions of section 2, Public Law 92-500, the Speaker had appointed Mr. BLATNIK, Mr. JONES of Alabama, Mr. WRIGHT, Mr. HARSHA, and Mr. GROVER as Members on the part of the House of the National Study Commission under the Federal Water Pollution Control Act Amendments of 1972.

The message further informed the Senate that, pursuant to the provisions of section 2(a), Public Law 91-354, as amended, the Speaker had appointed Mr. EDWARDS of California and Mr. WIGGINS as members of the Commission on on the Bankruptcy Laws of the United States on the part of the House.

The message announced that the House had passed, without amendment, the joint resolution (S.J. Res. 42) to extend the life of the Commission on Highway Beautification established under section 123 of the Federal-Aid Highway Act of 1970.

ORDER ON PRINTING OF DAILY PROGRAM

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent, for the remainder of this session of the 93d Congress, that the statement of the program daily appear just prior to the motion to adjourn or to recess, whatever the case may be.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 12 o'clock meridian.

After the recognition of the two leaders or their designees under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Mr. MCCLELLAN, Mr. ROBERT C. BYRD, Mr. HUGHES, and Mr. PROXMIRE.

At the conclusion of the 15-minute orders, there will be a period for the transaction of routine morning business of not to exceed 15 minutes, with statements therein limited to 3 minutes, after which there will be a period for eulogies to the late former President Harry S. Truman. There is a time limitation on such period of not to exceed 2 hours, and it will be under the control of the distinguished senior Senator from Missouri (Mr. SYMINGTON).

At 4 o'clock tomorrow afternoon, the Senate will proceed to the consideration of the so-called Watergate resolution, on which a vote may occur.

ADJOURNMENT

Mr. ROBERT C. BYRD. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 12 o'clock meridian tomorrow.

The motion was agreed to, and at 5:05 p.m., the Senate adjourned until tomorrow, Tuesday, February 6, 1973, at 12 o'clock meridian.

EXTENSIONS OF REMARKS

NINETIETH BIRTHDAY ANNIVERSARY OF FORMER REPRESENTATIVE HOWARD W. SMITH, OF VIRGINIA

HON. WILLIAM LLOYD SCOTT

OF VIRGINIA

IN THE SENATE OF THE UNITED STATES

Monday, February 5, 1973

Mr. SCOTT of Virginia. Mr. President, my predecessor in the House of Representatives, Judge Howard W. Smith, celebrated his 90th birthday last Friday. As a token of our esteem for him the senior Senator from Virginia, HARRY F. BYRD, JR., and I had him as our guest for luncheon in the Senate dining room. Judge Smith represented the Eighth Congressional District of Virginia for 36 years, which ended January 3, 1967. Everyone knew where he stood during his term of office whether they agreed with his position or not.

The Alexandria Gazette had an editorial on Friday which discussed how the people of Virginia feel about the venerable gentleman. I would like to share the editorial with many of whom, are also good friends of the former Congressman. Therefore, I ask unanimous consent that the editorial be printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

A VENERABLE "REACTIONARY"

Without a doubt, Judge Howard W. Smith Sr. is one of Alexandria's most distinguished residents. During his years in the U.S. House of Representatives, one might say he was also one of Alexandria's most talked about and controversial residents. Lean, gray-haired, charming and reflective, Judge Smith celebrates his 90th birthday today.

Born in a farmhouse, which was bought by his grandfather in 1833, in Fauquier County, the Judge quips that he was weened and raised on conservatism. Having graduated in law from the University of Virginia, he began his productive career in Alexandria at 21 years of age. At that time, according to Smith, "the Constitution was the Bible of the Nation." Admittedly a "strict constructionist," he fought his way up the political ladder through the 8th District, winning a seat in Congress in 1930 under the Hoover administration. It was a seat he was destined to hold for the next 36 years under six presidents.

During his rousing political career, he waged a tireless campaign to uphold what he considered to be the Founding Fathers' ideals as set forth in the Constitution. Even to this day, Judge Smith displays high admiration and respect for George Washington in particular. Much concerned over what he considers to be flagrant misconceptions and misinterpretations of the Constitution, the Judge traces the disturbing trend to Roosevelt's New Deal. Basically, Smith says, "I disagreed with the extravagance of expenditures" initiated by the New Deal. He also accuses Roosevelt of "packing" the Supreme Court, a practice not uncommon today. Because of his furious attacks upon the New Dealists, Smith claims Roosevelt once called him "the worst reactionary in Congress." Smiling, the Judge says, "I am rather proud of that."

As his reputation as a staunch conservative grew, so did his powers. Judge Smith held the mighty position of Chairman of the House Rules Committee for 12 years. During that time, liberals harshly rebuked him for discouraging "progressive" bills as they were proposed. Smith was especially hostile to bills which might increase federal spending. Today, he feels that his most gloomy predictions have become reality as he points to the nation's unprecedented trade deficits and debts. If this country hopes to survive, warns Smith, it must steer toward "sound fiscal policies."

Commenting on the current battle between Congress and the President, the Judge insists that Congress has no one else to blame but itself for its weakness. "What powers they've (Congress) lost, they've given away," he contends. Furthermore, he laments the fact that now "organized minorities control Congress." Even at 90, his insight is young. Regarding Congress' claim that the President has grown callous to their demands, Smith feels that "Nixon should be more diplomatic."

Undeniably, Judge Howard Smith will go down as a great American figure who dedicated his time and talents to keep his country strong and proud. Although many will hotly disagree with his opinions, none will ever question his sincerity, his dedication and his unwavering patriotism. Wholeheartedly, the Gazette joins the community in wishing Judge Smith a very happy birthday.

TRIBUTE TO ROBERT RAMSPECK

HON. JEROME R. WALDIE

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 5, 1973

Mr. WALDIE. Mr. Speaker, as a member of the House Post Office and Civil Service Committee, and as chairman of